

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

UNITED STATES OF AMERICA : CASE NO.
:
v. : (Judge Connolly)
:
KEITH THOMAS DOUGHERTY : 1:19-CR-00140

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 1
(Pages 1 through 237)

Held before the HONORABLE COLM F. CONNOLLY
November 30, 2021, commencing at 8:42 a.m.
Courtroom No. 1, Federal Building, Harrisburg, Pennsylvania

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23 Proceedings recorded by machine shorthand; transcript
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195 (not completed on Day 1)

1 (Proceeding commences at 8:42 a.m.)

2 THE COURT: All right. Good morning, Mr. Dougherty.
3 Mr. Perri, why don't we do introductions for the record so we
4 have everybody.

5 MR. ADKINS: Shawn Adkins, Your Honor.

6 MR. PERRI: David Perri.

7 AGENT CRUZ: Christopher Cruz.

8 MS. LESKO: Teresa Lesko.

9 THE COURT: All right.

10 MR. YOUNG: Good morning, Judge. Tom Young.

11 THE COURT: And Mr. Dougherty.

12 MR. DOUGHERTY: Keith Dougherty.

13 THE COURT: All right, very well. Okay. So I've
14 ruled, I think, taking care of all the pending pretrial
15 motions. Are there any issues that we need to address this
16 morning? I thought we should do that before we bring in the
17 jury.

18 My understanding is we should expect the venire to be
19 fully comprised and randomized and then brought up here
20 probably around 9:30. I also understand, starting tomorrow,
21 it's better for the Marshals to have Mr. Dougherty brought in
22 to start at 9:00 is my understanding. Is that right?

23 DEPUTY MARSHAL: Yes, Your Honor.

24 THE COURT: So we'll do that, we'll start at 9.
25 Anything, other preliminary matters?

1 MR. PERRI: Yeah, just a few, Your Honor. I just
2 want to make sure that we will be able to use the podium and
3 walk around the courtroom, to a limited extent. Would that be
4 all right?

5 THE COURT: Yeah. I guess I had been informed that
6 there is the Marshals' preference, for security reasons, to
7 limit Mr. Dougherty's --

8 DEPUTY MARSHAL: Yes.

9 THE COURT: -- movements?

10 DEPUTY MARSHAL: Yes, Your Honor.

11 THE COURT: And if he comes to the podium, it's going
12 to be an issue apparently?

13 DEPUTY MARSHAL: No, I think that's okay if he goes
14 to the podium with the ear buds. I don't think that would be a
15 problem.

16 THE COURT: Is that satisfactory to the Government?
17 Or is there --

18 MR. PERRI: Well, just when we're questioning the
19 witnesses, Your Honor, I'd like to do that from, you know, here
20 or if I'm giving an opening statement, I would prefer not to be
21 confined to my seat.

22 THE COURT: Well, that's fine. But the question is,
23 did you want to move up further? That's what I'm asking. What
24 is it you would like to do?

25 MR. PERRI: Oh, okay. I would definitely like to be

1 able to use the monitor.

2 THE COURT: They're telling me Mr. Dougherty can do
3 that, so that's not a problem.

4 MR. PERRI: Great. And just to be able to stand here
5 and talk to the jury.

6 THE COURT: Now that might be a problem, I don't
7 know. Can Mr. Dougherty do that?

8 DEPUTY MARSHAL: From the --

9 THE COURT: He may not want to do that. What do you
10 want to do?

11 MR. DOUGHERTY: I just want equal treatment, Your
12 Honor. Whatever is acceptable for the prosecution, I'd like
13 the same.

14 DEPUTY MARSHAL: Were you referring to the sidebars,
15 Your Honor, or to --

16 THE COURT: I guess the first thing I'm referring to
17 is just to make sure, because Mr. Perri raised the issue of the
18 podium, let's -- I'm not worried about sidebars for a second --
19 just, for instance, during opening statements. Mr. Perri wants
20 to stand there. Can Mr. Dougherty stand there?

21 DEPUTY MARSHAL: That shouldn't be a problem. I
22 guess we prefer to limit his movements since he is in custody.

23 THE COURT: Well, I get that, but is he limited to
24 there or do you want to further limit it?

25 DEPUTY MARSHAL: I guess I would prefer if he would

1 remain behind the podium.

2 COURTROOM DEPUTY: Judge, if I can interject? The
3 court reporter needs you to be on a mic. When you walk around
4 in here, she'll lose you, so it does help if you're near a
5 microphone.

6 MR. PERRI: But I'm only two feet away from --

7 COURTROOM DEPUTY: We can move that around when we
8 get to the trial part. We can slide that up and get a little
9 closer. But walking around, it becomes difficult for her to
10 hear you.

11 MR. PERRI: Sure. I'm not asking you to walk around,
12 I'm just asking to be able to stand here and see my witness.

13 THE COURT: Well, let's just deal with openings
14 first. So for openings, you wanted to stand there?

15 MR. PERRI: I can stand at the podium for openings.

16 THE COURT: Let's do that. All right. Then, now so
17 openings everybody will be at the podium. Both parties. Fair?

18 MR. PERRI: Yes.

19 THE COURT: Okay. Then questioning witnesses. All
20 right. First of all, questioning witnesses, my understanding
21 is the rule in this courtroom is if you're vaccinated, you can
22 take your mask off if you are speaking. Now, Mr. Dougherty,
23 are you vaccinated?

24 MR. DOUGHERTY: No.

25 THE COURT: See, that's going to be a problem. Now

1 the witnesses, we've already addressed. The witnesses are
2 going to -- first of all, I understand they're vaccinated and
3 they're not going to wear a mask. Is that right?

4 MR. PERRI: That's my understanding.

5 THE COURT: All right. I don't know what we're going
6 to do with Mr. Dougherty.

7 COURTROOM DEPUTY: I think, Judge, he's probably far
8 enough away from everybody if you get back to the social
9 distancing.

10 THE COURT: Is he more than six feet?

11 COURTROOM DEPUTY: It's over here, so we got a good
12 barrier here. I think he'll be all right.

13 THE COURT: Are people comfortable with that?

14 MR. YOUNG: Yes.

15 THE COURT: You are?

16 MR. PERRI: Yes.

17 THE COURT: Okay, that's what we'll do. So when you
18 are speaking, you can take your mask off. All right. And then
19 the witnesses, we will require to take their masks off when
20 they're on the stand so the jury can assess the witness's
21 credibility. I'm far enough, I'm going to take my mask off.
22 All right, okay.

23 So now let's talk about from where you conduct
24 examinations. And you would like to -- I guess I'd like
25 clarity. Do you want to move the podium forward or do you want

1 to leave the podium to question a witness?

2 MR. PERRI: Judge, speaking candidly, I'm a walker.
3 And I'm trying to -- I understand your concerns.

4 THE COURT: Well, do me a favor. Just answer the
5 question because -- don't assume I have a concern. I just want
6 to know the answer. What do you want to do?

7 MR. PERRI: I would like to -- I would like to not be
8 confined to this spot. I would like to be able to step here
9 and just -- I'm not asking you, you know, to do laps.

10 THE COURT: You can see where it poses an issue for
11 the Marshals, right? And so that's what I'm trying to do is
12 balance it. I mean, we have a Defendant. He is innocent until
13 proven guilty. But he's been accused of threatening judicial
14 officers. So you can understand why the Marshals, to do their
15 job, they want to have limitations on the Defendant's
16 movability.

17 I don't know -- actually, what are the Marshals going
18 to do -- Mr. Dougherty, are you expected to take the stand?

19 THE DEFENDANT: Yes.

20 THE COURT: So what are you going to do when he
21 testifies?

22 DEPUTY MARSHAL: Would he testify from over there
23 or --

24 COURTROOM DEPUTY: He has to go here.

25 DEPUTY MARSHAL: We would set up in advance. Someone

1 would be over there behind him, so we couldn't follow him over
2 there, and then we would just need notice that he was going to
3 be --

4 COURTROOM DEPUTY: I could have a chair put here.
5 They can be here already when he walks up.

6 THE COURT: So make it subtle, all right? That's
7 what we'll do. Okay.

8 DEPUTY MARSHAL: If I may interject? If we could
9 recess before he would take the stand, too, so we would already
10 be there before the jury comes back in, if that would be
11 acceptable, Your Honor?

12 THE COURT: That's acceptable. I want to try to
13 please everybody, if I can. I mean, one thing, would it be
14 possible -- I guess, do you have to be seated there? Could you
15 be seated over here for the entire trial?

16 DEPUTY MARSHAL: I could.

17 THE COURT: Well, then -- because if you did that,
18 then maybe he could stand because you'd have a beeline for him.
19 I don't know. I mean --

20 DEPUTY MARSHAL: I guess I prefer, because it's
21 access up to here as well, I prefer not to sit over there the
22 entire time, Your Honor.

23 THE COURT: Gotcha. You're law enforcement?

24 AN AGENT: Yes, sir.

25 THE COURT: Frankly, what I'm wondering is if we

1 couldn't just, because it's easier to treat them equally, is if
2 I could allow Mr. Perri and Mr. Dougherty to stand roughly
3 where Mr. Perri is. And I am just wondering if the two of us
4 plus we do have a law enforcement agent at the table on the
5 outer edge, if that --

6 DEPUTY MARSHAL: That would be acceptable.

7 THE COURT: We'll basically put you on notice that
8 you need to -- and I'm not suggesting at all, Mr. Dougherty,
9 that you are going to do anything but behave yourself, but I
10 just need to do my job and plan for potential events.

11 MR. DOUGHERTY: Yes.

12 THE COURT: So it's going to be incumbent upon you
13 to, you know, help out.

14 AN AGENT: I will, Your Honor.

15 THE COURT: I actually feel pretty confident we're
16 going to be okay. I think we're going to be fine. Okay, so
17 that's what we'll do. So you may stray from the podium to that
18 area that I've just indicated. Mr. Dougherty can do it, but he
19 also doesn't need to do it.

20 MR. PERRI: Right.

21 THE COURT: All right. We've addressed that. What
22 else?

23 MR. PERRI: Your Honor, I'm not sure we talked about
24 it at the last hearing, but I was wondering if I could ask the
25 Court for a little clarification on what Mr. Young's role will

1 be as standby counsel. I'm not clear on that. And I notice
2 that, for the record, Mr. Young is seated next to the
3 Defendant.

4 If he's advising the Defendant, is he really standby
5 counsel? Is he going to be suggesting objections that the
6 Defendant should make? If he does that, I don't think he's
7 standby counsel.

8 So I know that at the previous hearings, Mr. Young
9 was seated in the spectator pews in the back of the court. And
10 I know that the Defendant has been adamant that he does not
11 want any legal representation in this case despite the Court's
12 many efforts to speak to him about that.

13 THE COURT: Pleading, I think, would be a fair word,
14 pleading him to take advantage of counsel, yes.

15 MR. PERRI: So I just don't think that it's fair for
16 him to -- and I don't know if this is what he's decided or not.

17 THE COURT: Right. So that's a fair question. So
18 let's hear. What is -- I know in my court, the practice is
19 standby counsel does not sit at the table. I don't know what
20 other courts have done. Mr. Young, I think you do have
21 experience in this, so let me hear from you.

22 MR. YOUNG: All right, Judge. First of all, being
23 standby counsel is one of the most, I think, excruciating
24 experiences for a lawyer to have. The role is not
25 well-defined. There are -- there's a little leeway in how --

1 there's some discretion the courts have in determining how much
2 or how little standby counsel works with a defendant.

3 That being said, my understanding, and I will be glad
4 to hear from Mr. Dougherty, is that Mr. Dougherty is steering
5 his ship. He is the captain. He's making all the decisions.
6 I am merely here to help out with some menial tasks, including
7 getting him copies of things that he was unable to get while he
8 was housed or incarcerated. I got some clothing for him.

9 THE COURT: Thank you for doing that.

10 MR. YOUNG: Sure. I will be glad to assist Mr.
11 Dougherty in that manner. If Mr. Dougherty wishes to have me
12 fulfill a function different than that, that goes beyond merely
13 providing him with services like that, but actual legal advice,
14 legal counsel, then I think it would be thoughtful and
15 practical for him to address that to the Court.

16 The Court can then make a decision. We can hear from
17 the Government about how far or how little that may go. But I
18 think that right now is my suggestion to the Court.

19 So for right now, unless Mr. Dougherty advises me
20 otherwise, my role is, I provided him with a little rules of
21 evidence book and some things about jury selection. I have
22 given him the basics about the 10 peremptory versus the 6, things
23 of that nature, just to give him some parameters to work with,
24 how openings work, things of that nature.

25 And I have not -- I did give him one more thing about

1 *Elonis*, maybe a little about jury instructions. So to that
2 extent, I have advised him on some legal matters.

3 THE COURT: Okay.

4 MR. YOUNG: But as I said, I don't plan on being a
5 part of nudging him on the shoulder to object to things or
6 things of that nature. However, if Mr. Dougherty wishes
7 something else, he can let me know and let you know and we can
8 figure out what to do.

9 THE COURT: Okay. Mr. Dougherty?

10 MR. DOUGHERTY: Your Honor, again, Mr. Young being
11 here, I was just trying to avoid the same, you know,
12 inappropriate appearance that you're worried about with where
13 the Marshals would be sitting or whatever the case may be.

14 He's been more than willing to give me advice but
15 caution me that he's not acting as co-counsel or any kind of
16 hybrid role. And please respect that, and I'm doing my best to
17 provide that. But he's been helpful with the things that he
18 indicated. But that's what I understood his role to be.

19 THE COURT: So what I think is appropriate, I'm going
20 to follow the practice of my court historically. I'm going to
21 ask Mr. Young not to sit at counsel table.

22 MR. YOUNG: Sure.

23 THE COURT: I think it could also confuse the jury
24 potentially. Then I end up being in a position to describe
25 your role. That could lead to all sorts of issues and that

1 unfair conclusions could be drawn against Mr. Dougherty
2 perhaps. Now there's a table behind you. What is that table
3 for?

4 COURTROOM DEPUTY: He's free to sit there, Judge.
5 That's if we have multiple defendants. So that would be great
6 if he could sit behind.

7 THE COURT: Why don't we just do that. That way --
8 and then during breaks, if Mr. Dougherty felt the need to ask
9 you for some of the, to do some of the tasks that you
10 described, we could do that. I don't think that should occur
11 during trial. And, of course, you're standby really at the
12 request -- well, not really, you are standby at the request of
13 the Court, so I may need to actually consult with you, so then
14 you're there.

15 And I think we will not describe your role, we'll
16 just leave it. It's a different table. And, Mr. Dougherty,
17 you should not be speaking with Mr. Young in front of the jury.
18 Having said that, if you have an epiphany and change your mind
19 that you think, in fact, you would be better served by having
20 counsel, and I've actually seen that happen, defendants think
21 twice, then I do think at that point we'll -- it would be
22 appropriate to speak with me, let me know that you want to
23 address that issue, and then we'll do so. Does that make
24 sense?

25 MR. YOUNG: It does to me, Judge. I will sit right

1 back there.

2 THE COURT: Thank you very much. Again, I just want
3 to state for the record, I did before, but I do think you've
4 demonstrated, you know, such a degree of professionalism and
5 you've been a real credit to our profession, so I thank you on
6 behalf of the Court.

7 MR. YOUNG: Oh, thanks, Judge, I appreciate that.
8 I'll be right here if he needs me.

9 THE COURT: Okay. All right. That takes care of
10 that issue. Anything else?

11 MR. PERRI: Yes, Judge, a related matter. I was
12 wondering if the Court planned in its preliminary discussions
13 with the jury to let them know that the Defendant is pro se in
14 this matter and that that's by his own choice. I don't want
15 them to be wondering, hey, how come there's three people for
16 the Government and nobody for the Defendant?

17 And that that's something that he prefers and that he
18 wants and that he was -- it's an educated choice that the Court
19 has assured itself of, and that he will be expected to abide by
20 the same rules as everybody else since he's acting as his own
21 attorney.

22 THE COURT: Okay. Mr. Dougherty, do you disagree
23 with that?

24 MR. DOUGHERTY: No.

25 THE COURT: Okay. So why don't I inform the jury --

1 actually, just one second. So I put together some preliminary
2 instructions. Let me hand them to you. They're very, very
3 short. So why don't you all take a look at these. Could you
4 also give Mr. Young a copy?

5 MR. YOUNG: Thanks, Judge.

6 THE COURT: That's why I had six.

7 (Complied.)

8 MR. YOUNG: Just so we're clear with everybody, I
9 would appreciate if I could be given copies of whatever is
10 floating around just because --

11 THE COURT: No, I want that. That was unintentional
12 that you were not given --

13 MR. YOUNG: No, no, I understand that. If the
14 Government could also be on notice that I should be provided
15 with anything that is being provided to Mr. Dougherty because
16 we don't know what's going to happen and I need to be able to
17 be ready to --

18 THE COURT: Mr. Perri, do you agree with that?

19 MR. PERRI: Yes, Your Honor.

20 THE COURT: All right, thank you. I'll also hand out
21 some voir dire. I looked at the voir dire. I condensed some,
22 you'll see. You can take a look at that. So let's do the
23 preliminary instructions first before we get to that. Just
24 tell me when you're ready to discuss the preliminary jury
25 instructions.

1 MR. PERRI: It looks fine to us, Judge. It's pretty
2 basic stuff.

3 THE COURT: Okay.

4 MR. PERRI: And when you talk to the jury about the
5 pro se status, that will be in addition to --

6 THE COURT: Yeah. Do me a favor, let's wait until
7 Mr. Dougherty is ready and then we'll talk about amendments or
8 revisions.

9 (Pause.)

10 THE COURT: Ready?

11 MR. DOUGHERTY: Yes.

12 THE COURT: Mr. Dougherty, do you have any objections
13 or any thoughts?

14 MR. DOUGHERTY: No.

15 THE COURT: No, okay. So then what I would propose
16 to do is, when I get to the last sentence of kind of the
17 introduction, this would be on page 3, the Court describes the
18 role of the jury, at that point, what I would do is offer to
19 introduce the parties. And then I would just say that Mr.
20 Dougherty has decided to represent himself in this case, all
21 right.

22 Did you think, Mr. Perri, I needed to say anything
23 other than he decided to represent himself? And I will
24 explain, so he will be serving as his own lawyer, he's not a
25 lawyer, but he has made the decision to proceed that way. And

1 I do think what I should say is, and, therefore, when he is
2 asking questions or making opening statements, at that point
3 he's acting in the role of an attorney. All right. I think I
4 should distinguish at that point that's different from taking
5 the stand and offering testimony.

6 Testimony is evidence, and I'm going to talk to you
7 about that later. But -- and a Defendant in a criminal case
8 has a right under the fifth amendment not to present any
9 evidence. So the -- but you're to view statements made by Mr.
10 Dougherty when he is standing at the podium, you don't treat
11 that as evidence, you treat that as lawyer discussion. And --
12 I mean, I'm a little leery of saying too much about taking the
13 stand.

14 I have warned you, Mr. Dougherty, I want you to be
15 really careful about not testifying during your opening
16 statement. We talked about that at length. So you can say
17 things like, the evidence will show, I expect the evidence will
18 show this, but you can't effectively testify in your opening
19 and then not take the stand and try to rely on your opening as
20 if it were testimony. Do you understand that?

21 MR. DOUGHERTY: I think so, yes.

22 THE COURT: Okay. Mr. Young, do you have any
23 suggestions that you think in terms of what I ought to say or
24 not say with respect to introducing Mr. Dougherty, explaining
25 that he's pro se, saying that he may or may not take the stand,

1 that is a decision that he has, and you can't hold it against
2 him if he chooses not to put on evidence or take the stand; but
3 what he says as a lawyer in his role as representing himself is
4 not evidence and should not be considered as such, that should
5 be considered as the discussion of an attorney.

6 MR. YOUNG: Yes. I would just add one thing, Judge.
7 Just since he's acting as his own attorney, he may ask
8 questions of witnesses, he may give an opening statement, just
9 remember he will be acting as a lawyer in that capacity, so
10 that's not testimony. If and when he takes the stand, you'll
11 know it, something to that effect.

12 THE COURT: Okay. All right, sounds good.

13 MR. PERRI: One other thing, Judge. I would ask that
14 the Court consider also saying something to the effect that
15 there are procedural evidentiary rules that apply in the
16 courtroom and the Defendant, acting as his own lawyer, will be
17 expected to abide by them just like any other lawyer in the
18 courtroom.

19 THE COURT: I think that's fair. Any objection, Mr.
20 Dougherty?

21 MR. DOUGHERTY: No.

22 THE COURT: Okay. Anything else about the
23 preliminary jury instructions?

24 MR. PERRI: No, Your Honor.

25 THE COURT: All right. And my intent is not to

1 distribute them, I thought I would just read them.

2 MR. PERRI: No objection.

3 THE COURT: You're good with that?

4 MR. DOUGHERTY: Um-hum.

5 THE COURT: Okay, so that takes care of that. Now
6 let's look at the voir dire. And I need to -- obviously,
7 there's some things I need to have you all fill in for me. So
8 although you've been kind enough to orally represent or
9 introduce yourself, I'd like if you could submit something to
10 me in writing so I'm not going to forget a name, make sure I
11 have all the names correct. Same for the witnesses. Just let
12 me know if there are any objections to any of these questions.

13 (Pause.)

14 THE COURT: Just let me know when you're all ready.

15 MR. PERRI: No objection, Your Honor.

16 THE COURT: Do you have a list of everybody at the
17 table and a list of witnesses, too? If you could hand that up?
18 Thank you.

19 (Complied.)

20 (Pause.)

21 THE COURT: Mr. Dougherty, do you have any objections
22 to the voir dire?

23 MR. DOUGHERTY: I raised an objection to question 21,
24 but I see it's included anyway.

25 THE COURT: You object to 21?

1 MR. DOUGHERTY: Yes.

2 THE COURT: And why? I would have thought you would
3 almost want 21, so why do you object?

4 MR. DOUGHERTY: Because it gives a premonition or it
5 implies that there's something wrong with that as being singled
6 out. Why didn't you put down NAACP, ACLU, whatever? Any other
7 constitutionally protected activity, I don't see mentioned in
8 these questions anywhere. That is, in fact, a constitutionally
9 protected activity and, according to the *Holder* decision,
10 includes all able-bodied men. And we're acting like --

11 THE COURT: Let me ask you this -- sorry to
12 interrupt, but just to cut to the chase. So I do recall that
13 you did say, well, why not have a question -- what if we had a
14 question that also then -- if we kept this question, but we had
15 another question that said, have you or a close friend or
16 family member ever been a member of -- and then you would want
17 to put what? The ACLU?

18 MR. DOUGHERTY: Yeah.

19 THE COURT: Give me all of them. I want to write
20 them down.

21 MR. DOUGHERTY: ACLU, NAACP, Citizens United.

22 THE COURT: Okay. Anything else?

23 MR. DOUGHERTY: That would be fine.

24 THE COURT: So the Government, why don't I just add a
25 question then that says, have you or a close friend or family

1 member ever been a member of the ACLU, the NAACP or Citizens
2 United? Any objection to that?

3 MR. PERRI: NAACP? I think that could create an
4 appellate issue, Judge, I really do.

5 THE COURT: Why?

6 MR. PERRI: Because it seems to be introducing race
7 into the jury selection process.

8 THE COURT: Well, I think you're all trying to find
9 out information. I mean, the National Association for the
10 Advancement of Colored People is not comprised solely of any
11 one particular race. I mean, I think what Mr. Dougherty is
12 getting at is folks that would align themselves with the NAACP
13 might have certain views, and he might make jury selection
14 decisions based on that much the same way you're trying to find
15 out if members of the militia or members of a group that
16 considers itself to be militia might have certain views. Do
17 you want to just scrap both questions?

18 MR. PERRI: We won't object, Your Honor.

19 THE COURT: Well, what do you want?

20 MR. PERRI: I guess -- I don't see the political
21 dimension for NAACP. And actually, I don't see whether or not
22 militia is a political question at all. But I guess we won't
23 object.

24 THE COURT: Well, let me ask you this. Why do we ask
25 whether anybody has ever filed a lawsuit against another

1 person?

2 MR. PERRI: Because we want to know what that their
3 experience is with the criminal justice system -- I mean, with
4 the court system.

5 THE COURT: Well, we've already asked, have you ever
6 served as a juror?

7 MR. PERRI: It goes along with the same lines. But I
8 guess we don't object, Your Honor.

9 THE COURT: Well, okay. Then we'll just -- we can
10 ask. Let me ask you, Mr. Dougherty, is there not a better way
11 of phrasing the question though that that is not so limiting?
12 In other words, I think what you're getting at was, these are
13 all groups that had litigated constitutional issues. Isn't
14 that what you're really looking to find out?

15 MR. DOUGHERTY: Again, I'm not looking -- I would say
16 it's improper to question anyone on their race, religion, or
17 affiliation with the militia as a constitution protected
18 activity. If, in fact, you're saying that a question about
19 lawsuits and everything, that is appropriate, you know, because
20 that gives you certain indications of different things.

21 But to try and imply there's something wrong with any
22 of those groups, I agree with Mr. Perri, that creates the
23 impression that you are bringing racism in if you ask about
24 NAACP, just like you're implying there's negative purpose to
25 militias where, in fact, in my, you know, approach to it, I

1 believe the NAACP is a militia working through the partition
2 clause for good, just like the ACLU, just like Citizens United.

3 Now Citizens United would certainly not agree with
4 the NAACP, but it would give you some sort of balance. You
5 asked me if I, you know, would balance the question. I would
6 leave it out completely, that's just my point.

7 Because, again, no dispute that it indicates in the
8 second amendment a well-regulated militia being necessary for
9 the security of a free state, which is an accused absolute and
10 according to Justice Scalia when he wrote the opinion, it
11 pre-existed the founding of the country and, therefore, it's
12 protected by the ninth amendment.

13 We cannot read the constitution or any of the
14 statutes, laws, regulations to prohibit being part of one.
15 And, in fact, prior to the amendment to the Pennsylvania
16 Constitution, it was, you know, a mandatory function and it
17 basically included the original definition of all able-bodied
18 men.

19 So I believe it's a loaded question to even if you
20 don't have members of a militia, you're implying there's
21 something wrong with the militia, just like you would be
22 implying something wrong with someone being part of the ACLU.

23 THE COURT: I'm going to strike question 21, and I'm
24 not going to ask the ACLU question. I'm going to strike
25 question 21. All right. Anything else? Okay. I think we're

1 ready to go.

2 COURTROOM DEPUTY: If we can, can we do a little run
3 through of the sidebar?

4 THE COURT: Oh, yes.

5 COURTROOM DEPUTY: Here are your headphones.

6 MR. PERRI: Judge, there's one other thing.

7 THE COURT: Yes, sorry, okay.

8 MR. PERRI: There is one other thing, just one
9 second. So my co-counsel reminded me. Judge, there was a
10 motion in limine that we filed on 404(b) and the Court issued
11 an order on that granting the motion, but sort of reserving its
12 decision as to the May 8th, 2015, visit to the Defendant and
13 also a May 13th.

14 THE COURT: Correct. I didn't see that being other
15 crimes evidence.

16 MR. PERRI: Right, Your Honor.

17 THE COURT: I didn't understand it.

18 MR. PERRI: Just to be clear, we don't think it is
19 either. But we didn't want anybody saying, hey, this is bad
20 behavior by the Defendant, you know, you're trying to get in
21 under bad behavior by the Defendant. In an abundance of
22 caution, we put that in there because we would like to talk at
23 least about the May 8th visit, and we wanted to be sure it's
24 okay to do that.

25 THE COURT: Okay. So the May 8th visit is

1 effectively an admission by the Defendant. I mean, those are
2 admissions under the rules.

3 MR. PERRI: True.

4 THE COURT: So it's not hearsay. The question is
5 relevance. Maybe Mr. Dougherty doesn't even object. So this
6 is an interview with -- was it Marshals?

7 MR. PERRI: Yeah, the Marshals.

8 THE COURT: On May 8th of 2019.

9 MR. PERRI: No, 2015, Your Honor.

10 THE COURT: 2015.

11 MR. PERRI: Yes. And they went to talk to him about
12 an altercation that occurred.

13 THE COURT: Correct. Okay. This was -- and you said
14 in the paper explicitly that the altercation did not involve
15 threats.

16 MR. PERRI: Did not involve threats.

17 THE COURT: Okay. Mr. Dougherty may not even object
18 to it. Let me hear that. Mr. Dougherty, are you aware of this
19 interview that occurred in May of 2015?

20 MR. DOUGHERTY: Yes, Your Honor, I was there.

21 THE COURT: Right. Do you object to the Government
22 adducing evidence about that interview?

23 MR. DOUGHERTY: No. I do object to it being
24 characterized as bad behavior.

25 THE COURT: Well, I wouldn't let them describe it

1 that way. They should just adduce facts.

2 MR. DOUGHERTY: Right. In fact, I did see in the
3 testimony of Christopher Cruz that he makes reference to the
4 incident and, in fact, is factually incorrect, which I intend
5 to demonstrate in terms of the documentation that I had asked
6 standby counsel to retrieve for me because I can't get through
7 here.

8 THE COURT: Do you have that documentation?

9 MR. DOUGHERTY: It's available in the ECF under
10 15-CV-582 from District Court.

11 THE COURT: Do you need a hard copy of it?

12 MR. DOUGHERTY: Yeah, that's what I need. In other
13 words, I need the service affidavits to prove it wasn't me that
14 was doing the service and all of that ballyhoo was my service
15 processor that I actually had to drag out of the building.
16 They were going to try to tackle him and take the service back.

17 THE COURT: Let's do two things. One, it sounds like
18 there is no objection, so you can bring it up. The second
19 issue though is a hard copy of the filing.

20 MR. DOUGHERTY: Affidavits of service, you know,
21 sworn to by the service processor.

22 THE COURT: All right. Do we have hard copies
23 somewhere?

24 MR. PERRI: He's talking about whether or not he
25 actually accomplished service in a particular way or not a

1 particular way, whether he did it right or wrong. I mean,
2 that's neither here nor there. We would not have copies of
3 that.

4 THE COURT: The answer is, you don't have a copy.
5 Mr. Young, do you have a copy?

6 MR. YOUNG: No, but if -- what Mr. Dougherty is
7 asking for, I can go to the public defender office.

8 THE COURT: We can present a copy?

9 MR. YOUNG: Yeah.

10 THE COURT: How many pages are we talking? Is this
11 voluminous? Hundreds of pages?

12 MR. DOUGHERTY: No, it's just the affidavit of
13 service for each of the departments, and I think it might have
14 been five, but it would prove it wasn't me.

15 THE COURT: I don't want to go into what it's going
16 to prove or not prove. What is the DI number? Liz, do you
17 think we could look to see? You said 58 something?

18 MR. DOUGHERTY: It's 15-CV-582 District Court of
19 District of Columbia, and it's the affidavit of service. You
20 would get it through the PACER system.

21 THE COURT: Okay.

22 MR. DOUGHERTY: Just hit the drop down box.

23 THE COURT: Hold up. So it's 15-CV-what?

24 MR. DOUGHERTY: 582.

25 THE COURT: It's in the District Court of?

1 MR. DOUGHERTY: For the District of Columbia. It's
2 *Keith Dougherty versus Chief McKee, et al.*

3 THE COURT: It's docket number, item number what?

4 MR. DOUGHERTY: It's got to be in the first 10, I
5 think, because, again, it's the affidavit of service that has
6 to be filled out by the service processor.

7 THE COURT: Okay. Hold on a second.

8 (The Court confers with the law clerk.)

9 THE COURT: All right. Are you trying to get the
10 certificate of service by Stevens and Lee?

11 MR. DOUGHERTY: It's not by Stevens and Lee, it would
12 be -- there is a form printed with the summons where the
13 service processor has to fill out who the summons was for and
14 when it was served. And they sign that it was done or
15 accomplished on a given date.

16 THE COURT: All right.

17 MR. DOUGHERTY: And there would be one for the date
18 in question relative to the Harrisburg clerk as far as I
19 remember. So that should be filled out by Michael Cobaugh, you
20 know, but -- it would be around the date of April 30th, 2015,
21 according to their testimony.

22 THE COURT: All right. There is a 58-page document
23 which says, complaint and summons, and has exhibits attached to
24 it.

25 MR. DOUGHERTY: That's not what we're talking about.

1 It should be docketed as an affidavit of service. I don't know
2 --

3 THE COURT: I'm looking at the docket sheet, as I
4 speak.

5 (Pause.)

6 MR. DOUGHERTY: Some of them would be by certified
7 mail, but this one would actually have an affidavit.

8 THE COURT: I'm not seeing anything.

9 (Pause.)

10 THE COURT: Docket number 1 is a complaint. And then
11 the next line does not have a docket number, and it says,
12 summons not issued as to all defendants, entered April 20,
13 2015. Docket number 2 is a motion for a CM/ECF password by
14 you. Docket number 3 is a motion to expedite issuance of
15 summons by you. Docket number 4 is a motion for a preliminary
16 injunction by you. The next entry is a summons issued as to a
17 number of people.

18 MR. DOUGHERTY: Um-hum.

19 THE COURT: It doesn't have a docket number
20 associated with it. The next entry is docket number 5, and it
21 says, entered in error as a duplicate to docket number 6,
22 motion to dismiss for lack of jurisdiction. Docket number 6 is
23 a motion to dismiss for lack of jurisdiction. Docket number 7
24 is a corporate disclosure statement by Stevens and Lee. I
25 could continue, but I just -- there is a return of service

1 affidavit.

2 MR. DOUGHERTY: There we go.

3 THE COURT: Is that it?

4 MR. DOUGHERTY: That would be in that category, yes.

5 THE COURT: All right, let me look. And there's two
6 of those.

7 (Pause.)

8 THE COURT: This is a proof of service, docket number
9 12, it's dated -- it was filed May 20th, 2015. It's three
10 pages.

11 MR. DOUGHERTY: We're talking about the one
12 specifically for the incident at the Harrisburg clerks.

13 THE COURT: Right. But I don't know what that is.
14 This one has three pages, including a certified mail receipt
15 copy.

16 MR. DOUGHERTY: So that wouldn't be it. This one was
17 hand delivered by Michael Cobaugh, and it happened at different
18 dates. So it would be around the April 30th timeframe.

19 MR. YOUNG: With the Court's permission, I've got the
20 docket on my phone. May I approach Mr. Dougherty? He can look
21 at it, if he'd like.

22 THE COURT: Yes, that would be great. Thank you.

23 (Complied.)

24 THE COURT: Mr. Perri, what I'm trying to do is
25 quickly get this document, if it's possible, printed. And then

1 let's move.

2 (Pause.)

3 THE COURT: The thing I would focus on, if I were
4 you, is docket numbers 13 and 14, return of service affidavit.
5 Did you say by Michael Scott Cobaugh?

6 MR. DOUGHERTY: Yes.

7 THE COURT: Okay. Docket number 13 is a proof of
8 service signed by him. Do you want a copy of that?

9 MR. DOUGHERTY: And who was it for? Does it say?

10 THE COURT: William Caldwell.

11 MR. DOUGHERTY: Yes, that's it.

12 THE COURT: That's the one you want?

13 MR. DOUGHERTY: Yes.

14 THE COURT: Okay. Liz, can we get that printed? I'm
15 going to download it, and I'll send you a PDF.

16 MR. YOUNG: Yes, he's seeing it, Judge.

17 THE COURT: That's what it is. So it's a 26-page
18 document, and it's DI 13. Is that correct? Just confirm.
19 Right?

20 MR. DOUGHERTY: I didn't realize it was attached to
21 other documents.

22 THE COURT: No, well, the whole thing is 26 pages.

23 MR. YOUNG: It's 26 pages.

24 MR. DOUGHERTY: Oh, it's got everybody on there,
25 yeah.

1 THE COURT: That's fine. We will have it printed.
2 All right. While we're getting that document. Are there any
3 issues?

4 MR. ADKINS: On this paper, I put the Government's
5 representation of all the witnesses. I handwrote them in.

6 THE COURT: All right. Anything else?

7 MR. PERRI: I think that's it, Your Honor.

8 THE COURT: Is it Pat Armor?

9 MR. PERRI: I think it just says, Armor.

10 THE COURT: Okay. And Caleb Enerson. Michael
11 Corricelli. Is that correct?

12 MR. PERRI: Corricelli.

13 THE COURT: Christopher Cruz. Okay. Mr. Dougherty,
14 are there any other people I should mention that are potential
15 witnesses?

16 MR. DOUGHERTY: You're saying witnesses I wanted to
17 present?

18 THE COURT: Yes.

19 MR. DOUGHERTY: Well, again, I had made a number of
20 requests, as we had discussed, through Thomas Young, and --

21 THE COURT: You made a request, I recall, to subpoena
22 certain judges.

23 MR. DOUGHERTY: Certain judges and, for instance, the
24 former Clerk, Mary D'Andrea, Peter Welsh as a current Clerk,
25 and some various others. But there was a discussion that that

1 would all have to be discussed and approved.

2 THE COURT: But I don't recall ever receiving any
3 applications to subpoena them. There was one discussion that I
4 recall about a judge, that was it.

5 MR. DOUGHERTY: Well --

6 THE COURT: And I said you had to go through process,
7 you couldn't just stand up in court and make a petition.

8 MR. DOUGHERTY: Yes. The point being that when I
9 spoke with you on, I think it was August 25th, I said, did you
10 want me to present these requests through Thomas Young or --
11 because I could not communicate directly with the prosecution
12 under Criminal Rule 16.1. And you had indicated, yes.

13 So I had a running set of communications through Mr.
14 Young in the letter form. But then he indicated to me when
15 meeting with me, his understanding of standby counsel was that
16 that activity would be considered hybrid. I said, well, I had
17 spoken about this with the judge, you know, at one point
18 face-to-face. And he said, yes, that would be the better way
19 to go, to present --

20 THE COURT: The better way to go, but what I was
21 saying is you could ask Mr. Young kind of for how do you do
22 that, not that he would do it. He's not your lawyer. But that
23 was up to you. So the bottom line is you did not issue any
24 subpoenas for any witnesses?

25 MR. DOUGHERTY: I did not issue any subpoenas.

1 THE COURT: Okay, all right.

2 MR. DOUGHERTY: So the -- again, in my conversation
3 with you, and I hate to say that I misremembered, but I was
4 specifically asking you that since you had effectively rejected
5 the subpoenas I had tried to obtain earlier in the process --

6 THE COURT: I don't know what you're referring to,
7 the subpoenas you tried to obtain.

8 MR. DOUGHERTY: I tried to have depositions done.

9 THE COURT: Depositions, okay, right.

10 MR. DOUGHERTY: And you had rejected that at the
11 request of the prosecution. So then I also indicated at that
12 point, since I am under the impression that in prison we don't
13 have access to the drop down box where you can printout a
14 subpoena, that I, in fact, had to make that request and it
15 would have to be approved through you.

16 So I was doing that, like I said, in the written
17 narrative with the headings along those lines. In fact, most
18 recent one I had indicated, I requested activity from Thomas
19 Young that integrated a couple subpoenas being issued for
20 certain evidentiary matters. And again, I was under the
21 impression that that's the role that he was playing.

22 In fact, we had had a conversation -- the only
23 communication I ever had of any substance with former
24 prosecution, Jeffrey Finucane, was on February 20th, and he at
25 that point indicated he would not communicate with me.

1 And I said, well, at that point the communication we
2 had spoken that Thomas Young would be the go-between actually
3 and make any of those kinds of requests. But you're telling me
4 now that it had to be done by a subpoena. That is different
5 than what my understanding was.

6 THE COURT: Well, we're ready to bring a jury in now.
7 We've had many many hearings. And again, you've decided to
8 proceed pro se. I told you, you had to educate yourself about
9 the rules and whatnot. I did say for sure that you could ask
10 Mr. Young to provide you information about what steps you have
11 to go through to obtain a subpoena and whatnot. You haven't
12 subpoenaed any witnesses, so then I won't mention any.

13 Okay. Anything else before we bring the jury in?
14 We're having the document printed for Mr. Dougherty?

15 COURTROOM DEPUTY: Yes.

16 THE COURT: We'll provide -- let's get --

17 COURTROOM DEPUTY: I asked her for five.

18 THE COURT: We'll get copies made so you have those.
19 All right. Are we ready for the jury to go in?

20 COURTROOM DEPUTY: We're going to do a test.

21 (All parties test the sidebar conference technology.)

22 THE COURT: In my jurisdiction, for instance, they do
23 not go back with a Defendant, the jurors' lists.

24 COURTROOM DEPUTY: I take them all and shred them.

25 THE COURT: Okay, perfect. All right. So then we'll

1 bring them in. Mr. Dougherty, these people, they have been
2 randomized and they are now in certain order.

3 MR. DOUGHERTY: Okay.

4 THE COURT: Okay. And I'm going to follow your lead.

5 (Courtroom deputy explains jury selection process to
6 all parties.)

7 (Prospective jurors are brought into the courtroom at
8 9:59 a.m.)

9 (Prospective jurors are sworn.)

10 THE COURT: All right. Good morning, everybody.

11 First of all, my name is Colm Connolly. I'm actually a judge
12 from a different District of the United States, and I'm
13 presiding over this case. It's a criminal case.

14 And I'm not wearing a mask, I'm vaccinated. I'm so
15 far away from everybody, so that when I'm speaking, I will take
16 my mask off. We are going to follow that rule throughout this
17 case. Witnesses that testify will be required to take their
18 mask off. They're at a distance. And then when the lawyers or
19 the Defendant is speaking, they, too, will remove their mask,
20 but they'll be a distance away. All right.

21 So first of all, thank you. I thank you on behalf of
22 this District, the Middle District of Pennsylvania, that I've
23 been assigned to work on this matter. You are fulfilling a
24 constitutional role, and so the Court is grateful. It's an
25 important role that you all play in our constitutional system.

1 Let me tell you what we're going to do here. The
2 first thing we're going to do is we're going to select a jury
3 among you to sit in regards to this case. And so you're part
4 of what we call the panel of prospective jurors.

5 And this is a case that's been -- it's called United
6 States against Keith Thomas Dougherty. It's a criminal case,
7 as I mentioned. The Defendant, Keith Dougherty, is charged
8 with committing one count of mailing threatening communications
9 and two counts of interstate communications with threat to
10 injure in violation of federal criminal law.

11 From this panel, we will select a jury of 14, 12
12 jurors and then 2 alternates, who will be part of the trial.
13 And we have two alternates in the event that one or two of the
14 12 regular jurors becomes ill or is otherwise unable to serve.

15 We rely on juries in this country to decide cases
16 tried in our courts. So service, as I mentioned, is an
17 important duty of citizenship. And we require jurors to
18 conduct themselves with honesty, integrity, and fairness.

19 Under our system of justice, the role of the jury is
20 to find the facts of the case based on the evidence that is
21 presented at trial. And that is from the evidence that's seen
22 and heard in the court. And it's from that evidence that the
23 jury decides what the facts are and then applies those facts to
24 the law.

25 And the law comes from the Court. So the law that

1 you will apply is the instructions that are given by the Court.
2 And my role as the trial judge is to make whatever legal
3 decisions need to be made during the trial and then to explain
4 to the jury the principles of law that will guide its
5 deliberations.

6 We recognize that you all are here at some sacrifice.
7 I always tell jurors there's only three things that the
8 Government can just mandate from you: You pay taxes; if you're
9 drafted, you have to serve in the military; and then you have
10 to serve as a juror. Those are really the only affirmative
11 things the Government requires of you.

12 And it does involve personal inconvenience. But we
13 cannot serve -- we cannot excuse folks just based on mere
14 inconvenience. So what we look to is whether service would
15 present a compelling hardship that might require your excusal.

16 Now you've already been sworn, and there's a reason
17 for that. It's because we are about to conduct a process
18 called voir dire. It's questioning of prospective jurors. And
19 because it's important that you answer truthfully, you're
20 placed under oath. And that's why we do that.

21 And a deliberate false answer to the questions that
22 are posed could actually result in severe penalties. Basically
23 the questions you're going to hear I'm going to ask, they go to
24 finding out whether or not you're capable of rendering a fair
25 and impartial verdict.

1 We want to know if there's anything that might give
2 rise to circumstances that would make that difficult for you to
3 do, and that's why we're asking the questions. The questions
4 are not intended to embarrass anybody. And if you had a
5 response to a question that I posed that you don't want to
6 speak about in front of anybody else, just raise your hand and
7 then we can conduct it in a private setting. We've got
8 mechanics here, you'll see, that we can put in air noise and
9 just question people privately over by my bench here.

10 Now during the voir dire process, there may be times
11 when we're going to have to speak, the lawyers and the
12 Defendant and myself. And again, what we do then is we'll put
13 on ear phones, you'll all be out there, and we'll put up the
14 white noise. And then we'll move people around here next to
15 microphones so we can speak and not be heard. All right.

16 Now I'm going to have the parties introduce
17 themselves. I'm going to start with the Government, the United
18 States. And I'm going to ask Mr. Perri, who's an Assistant
19 United States Attorney, the lead prosecutor, to stand and
20 introduce himself to you and the folks that are with him. All
21 right.

22 MR. PERRI: Good morning, everybody. My name is
23 David Perri. I'm an Assistant United States Attorney. I work
24 for the U.S. Attorney's office. This is my co-counsel, Shawn
25 Adkins. He's also an Assistant United States Attorney. And

1 also seated at the table with us is the case agent, he's our
2 United States representative. His name is Christopher Cruz.

3 THE COURT: Thank you. All right. And then Mr.
4 Dougherty. Mr. Dougherty has decided to proceed what's called
5 pro se. So he is not represented by a lawyer, and he's not a
6 lawyer. And so he is going to be -- he's playing two roles, if
7 you will.

8 So one is, he's acting himself, he's the Defendant
9 that's been charged with the three counts. But he's
10 representing himself. The law permits that to be done. And
11 when he speaks to you in the role of lawyer, you're supposed to
12 treat that as if he were a lawyer. And that is, it's not
13 evidence.

14 And that differs because when a witness takes the
15 stand, that's evidence. Now a Defendant in a criminal case
16 does not have to take the stand. They have a fifth amendment
17 right that makes that the case under our constitution, that the
18 burden of proof in a criminal case always rests with the
19 Government.

20 The Government has to establish guilt beyond a
21 reasonable doubt. The Defendant is innocent until proven
22 guilty beyond a reasonable doubt. And so the Defendant in our
23 country does not have to put on a defense. So -- and you can't
24 hold it against a Defendant if the Defendant chooses not to
25 testify or not to put on a defense.

1 But a Defendant may elect to testify, he has that
2 right as well. And when a Defendant testifies and sits here
3 and is under oath, that's evidence. But when a Defendant
4 speaks to you in the capacity of a lawyer, that's not evidence,
5 and it's not to be treated as evidence. It's to be treated in
6 the same way you would treat the statements from Mr. Perri and
7 his colleagues as a lawyer statement.

8 So, Mr. Dougherty, do you want to just stand and just
9 -- you can introduce yourself.

10 MR. DOUGHERTY: Everything the judge has said is
11 true. And my name is Keith Dougherty. And I am the Defendant.

12 THE COURT: All right. Thank you very much. All
13 right. All right. So we're now going to turn to voir dire,
14 all right. So I'm going to ask you a bunch of questions. So
15 you were just introduced to the Government and to Mr.
16 Dougherty.

17 And I'm just going to go over the names again. So
18 it's David Perri, Shawn Adkins, Christopher Cruz, and Mrs.
19 Teresa Lesko. And my first question is, are you related to or
20 personally acquainted with any of those individuals? Okay.

21 (No response.)

22 Question number 2, the Defendant, you've heard, is
23 Keith Thomas Dougherty. Do you or any member of your immediate
24 family or close friend have any connection with Mr. Dougherty?

25 All right. (No response.)

1 There are some other individuals whose names have
2 been associated with this case, and they consist of Caleb
3 Enerson, Eric Hanna, Christopher Conner, Michael Corricelli,
4 Christopher Cruz, Pat Armor, Joy Conti. Do you or any member
5 of your family or close friend have any connection to any of
6 those individuals? Okay. (No response.)

7 Have any of you read or heard anything about this
8 case? All right. (No response.)

9 Have you or any member of your family ever been a
10 witness to or a victim of or convicted of a crime? So no
11 witnesses, victims, or persons charged with crimes? Okay. (No
12 response.)

13 Have you or any member of your family or close friend
14 been employed by or investigated by a law enforcement agency?
15 And that would include any local police or private security or
16 federal agency.

17 A PROSPECTIVE JUROR: When you say family, immediate
18 family, like my father was involved in something years ago.

19 THE COURT: Give me the nature of it. Are you okay
20 with talking about that?

21 A PROSPECTIVE JUROR: It was over 30 years ago. I
22 don't know all -- remember all of the if's, and's, and but's,
23 but it was something with the Government from where he worked.

24 THE COURT: Okay. Well, he wasn't charged with a
25 crime, right? Because you've already answered that.

1 A PROSPECTIVE JUROR: We were here. We were in
2 court.

3 THE COURT: Were you?

4 A PROSPECTIVE JUROR: Yeah. And he had a fine.

5 THE COURT: Okay.

6 A PROSPECTIVE JUROR: There wasn't a jury, that I can
7 remember.

8 THE COURT: All right. Is there any reason because
9 of that experience that you had that you could -- would it make
10 you unable to be fair or impartial in this case?

11 A PROSPECTIVE JUROR: I don't believe so.

12 THE COURT: Okay. And what's your juror number?

13 A PROSPECTIVE JUROR: Four.

14 THE COURT: Okay. Anybody else? Yes, ma'am?

15 A PROSPECTIVE JUROR: I don't know if this is
16 relevant or not. But right now, I think I have something going
17 on in family court with an issue with my son at school.

18 THE COURT: Okay.

19 A PROSPECTIVE JUROR: I don't know if that's relevant
20 or not.

21 THE COURT: What's your number?

22 A PROSPECTIVE JUROR: Number 8.

23 THE COURT: All right. Would it have any ability or
24 any impact -- I'm sorry, let me rephrase it. Do you think it
25 would impact whatever experience you're having in state court

1 on your ability to be a fair and impartial juror in this case?

2 A PROSPECTIVE JUROR: I don't think so. It was to do
3 with bullying. It just got to where the police were in on it
4 because the resource officer was there.

5 THE COURT: Gotcha.

6 A PROSPECTIVE JUROR: I guess just the nature of it.
7 But, no, I don't think so.

8 THE COURT: And juror number 8, right?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay, thank you. All right. Anybody
11 else? (No response.)

12 Are you or any member of your family an official or
13 an employee of the United States Government? All right. A
14 couple people. Yes, ma'am, what number are you?

15 A PROSPECTIVE JUROR: One. My spouse is just a
16 federal employee.

17 THE COURT: And what does he do?

18 A PROSPECTIVE JUROR: He's an IT guy.

19 THE COURT: IT, okay.

20 A PROSPECTIVE JUROR: Defense Logistics Agency, DLA.

21 THE COURT: Gotcha. Yes, sir. Wait, we got a bunch
22 here. So I'm going to go with you, sir. Are you number 3?

23 A PROSPECTIVE JUROR: I'm 3. A nephew, I have a
24 nephew that's an agent, a federal agent.

25 THE COURT: What kind?

1 A PROSPECTIVE JUROR: FBI.

2 THE COURT: FBI, okay. Number 12, I think it is?

3 A PROSPECTIVE JUROR: Yeah, 12. My wife works for
4 NASA.

5 THE COURT: Okay. All right. Yes, sir, you're 13?

6 A PROSPECTIVE JUROR: Yep. Technical expert, Social
7 Security Administration.

8 THE COURT: And is that what you do?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. Yes, ma'am?

11 A PROSPECTIVE JUROR: Would a husband of a cousin be
12 relevant?

13 THE COURT: I'm going to save you that. Yes, ma'am,
14 what number are you?

15 A PROSPECTIVE JUROR: Twenty-one.

16 THE COURT: Okay.

17 A PROSPECTIVE JUROR: Does it have to be me or --

18 THE COURT: No, a member of your family.

19 A PROSPECTIVE JUROR: Oh, my fiancée is a federal
20 fireman.

21 THE COURT: Where is he a federal fireman?

22 A PROSPECTIVE JUROR: For the Pentagon.

23 THE COURT: In DC?

24 A PROSPECTIVE JUROR: Well, he's at Raven Rock.

25 THE COURT: Okay, great. You, sir, what number are

1 you?

2 A PROSPECTIVE JUROR: Eighteen. Did you say
3 immediate family? Because my one cousin, I'm pretty sure he
4 works for Homeland, but I'm not -- like I don't know what he
5 does. He just works -- I don't know.

6 THE COURT: That doesn't count. That doesn't count.
7 I'm going to limit to close family. Yes, sir, what number are
8 you?

9 A PROSPECTIVE JUROR: Twenty-eight.

10 THE COURT: Twenty-eight. Go ahead.

11 A PROSPECTIVE JUROR: I'm a director for the Division
12 of Budget For Health and Human Services.

13 THE COURT: Okay. All right. Ma'am, what number?

14 A PROSPECTIVE JUROR: Thirty-five.

15 THE COURT: Thirty-five. And what's your answer?

16 A PROSPECTIVE JUROR: My brother is a lawyer for the
17 Department of Justice.

18 THE COURT: Is that in Washington?

19 A PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. All right. Anybody else? You're
21 36?

22 A PROSPECTIVE JUROR: I'm 36.

23 THE COURT: And how about you?

24 A PROSPECTIVE JUROR: My son works for Letterkenny.

25 THE COURT: And I'm sorry, I'm having a hard time

1 hearing?

2 A PROSPECTIVE JUROR: My son works for Letterkenny.

3 THE COURT: Letter committee?

4 A PROSPECTIVE JUROR: Letterkenny.

5 THE COURT: I'm not sure what that is.

6 A PROSPECTIVE JUROR: He works in Chambersburg. Army
7 Depot. It's a military base.

8 THE COURT: Oh, okay. This is the problem from not
9 being from the area. So, see. All right. So you've got a son
10 in the military or working on a military base?

11 A PROSPECTIVE JUROR: Yeah.

12 THE COURT: Okay. Yes, sir, you're 37?

13 A PROSPECTIVE JUROR: Thirty-seven. I have a son
14 serving in the military currently.

15 THE COURT: All right. All right. And then you're
16 38 then, ma'am?

17 A PROSPECTIVE JUROR: Thirty-eight. My son serves in
18 the military, too.

19 THE COURT: Wow, that's very impressive to have both
20 of you so close and similar, isn't it? All right. So the next
21 row, the gentleman with the black --

22 A PROSPECTIVE JUROR: Forty-four. My father works at
23 Letterkenny Army Depot also, and then my brother is an active
24 member of the Air Force.

25 THE COURT: Okay. And you're 34?

1 A PROSPECTIVE JUROR: Forty-four.

2 THE COURT: Forty-four, okay, thank you. All right.
3 Let's see, there's a lady behind you in the very back row, I
4 believe. What number are you?

5 A PROSPECTIVE JUROR: Fifty-six.

6 THE COURT: Fifty-six.

7 A PROSPECTIVE JUROR: And my brother worked for
8 Homeland Security out of Philadelphia.

9 THE COURT: Okay. Anybody else? Yes, sir?

10 A PROSPECTIVE JUROR: Forty-eight.

11 THE COURT: Okay.

12 A PROSPECTIVE JUROR: My cousin is a federal police
13 officer at Letterkenny.

14 THE COURT: You are a federal police officer?

15 A PROSPECTIVE JUROR: No, my cousin is.

16 THE COURT: Okay. You can put the mask back on, I
17 can hear you now.

18 COURTROOM DEPUTY: Do you have your mask, sir?

19 A PROSPECTIVE JUROR: I don't have one.

20 COURTROOM DEPUTY: Do you need one?

21 A PROSPECTIVE JUROR: Yeah.

22 (Complied.)

23 THE COURT: Anybody else? Yes, ma'am? What number
24 are you?

25 A PROSPECTIVE JUROR: Twenty-seven. My stepbrother

1 is a U.S. Marine.

2 THE COURT: Okay. Yes, ma'am?

3 A PROSPECTIVE JUROR: Do you need to know about
4 brother-in-laws, too?

5 THE COURT: You spend a lot of time with him?

6 A PROSPECTIVE JUROR: Not really.

7 THE COURT: No, I don't need that. You, sir?

8 A PROSPECTIVE JUROR: Number 11. My son is in the
9 military.

10 THE COURT: All right. Anybody else?

11 A PROSPECTIVE JUROR: Thirty-two.

12 THE COURT: Thirty-two.

13 A PROSPECTIVE JUROR: My stepdaughter is AGR at Fort
14 Indiantown Gap.

15 THE COURT: I apologize, with the mask, it's so hard.

16 A PROSPECTIVE JUROR: She's AGR, Fort Indiantown Gap.

17 THE COURT: Okay. Okay. All right. Fair number of
18 you there. We may follow-up with questions with those folks.
19 All right. Now here's a question. Would you give more or less
20 weight to the testimony of a law enforcement agent or police
21 officer than you would to that of a civilian witness simply
22 because he or she is employed as a law enforcement agent or
23 police officer? All right. (No response.)

24 Next question. Is there anyone on the jury panel who
25 would not be able to sit in judgment of another individual

1 because of any personal beliefs? (No response.)

2 Next question. Do you believe that it is the
3 responsibility of the person accused to prove his or her
4 innocence? All right. (No response.)

5 Next, if you are selected as a juror in this case,
6 you will take an oath to render a verdict based upon the law as
7 given to you by the Court. You will be required to accept the
8 law as given to you by the Court without regard to any personal
9 opinion you may have as to what the law is or should be. Is
10 there any person who would not be able to reach a verdict in
11 accordance with the law as given to you in the instructions of
12 the Court? (No response.)

13 Next, provided the Government proves the Defendant's
14 guilt beyond a reasonable doubt, would anything you might learn
15 about the Defendant concerning such things as age, health,
16 race, national origin, religious affiliation, family
17 circumstances, or economic circumstances prevent you from
18 finding him guilty? (No response.)

19 Next, does anyone have a medical condition, for
20 instance, a visual or hearing impairment that might affect his
21 or her ability to devote full attention to this proceeding?

22 Yes, sir?

23 A PROSPECTIVE JUROR: I have hearing aids.

24 THE COURT: Does it affect -- are you able to hear
25 me?

1 A PROSPECTIVE JUROR: Sometimes.

2 THE COURT: All right. But not all the time?

3 A PROSPECTIVE JUROR: Sometimes it's hard to hear.

4 THE COURT: Okay. What number are you?

5 A PROSPECTIVE JUROR: Forty-seven.

6 THE COURT: Next, have any of you served as a juror
7 in a criminal or a civil case or as a member of a grand jury in
8 either the federal or state courts? Okay. So we'll start with
9 number 2.

10 A PROSPECTIVE JUROR: To be honest, I don't remember
11 if it was state, but I was in on a murder case in Gloucester,
12 Virginia.

13 THE COURT: Give me one second, all right. All
14 right. So you said it was a murder case in Virginia?

15 A PROSPECTIVE JUROR: Right.

16 THE COURT: Was there a verdict?

17 A PROSPECTIVE JUROR: It was after a few days he took
18 a plea bargain.

19 THE COURT: So there was no verdict?

20 A PROSPECTIVE JUROR: No verdict.

21 THE COURT: All right. And that experience, did it
22 affect your ability to be fair or impartial in a case here?

23 A PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Who's next? You, sir?

25 A PROSPECTIVE JUROR: Number 3. About 25 years ago,

1 I was on a federal one out in Philadelphia that took place. So
2 it was in Philadelphia. Then I also had one 10 years ago, it
3 was a county case.

4 THE COURT: Was the county a civil or a criminal
5 case?

6 A PROSPECTIVE JUROR: It was criminal, yeah.

7 THE COURT: Were there verdicts reached in both
8 cases?

9 A PROSPECTIVE JUROR: Yes.

10 THE COURT: Do you remember the verdicts?

11 A PROSPECTIVE JUROR: The federal one was -- I think
12 they were both guilty. They were both guilty, I want to say --
13 the last one was not guilty. I'm sorry, the county one was not
14 guilty. The federal one, it's been 25 years ago, I can't
15 remember.

16 THE COURT: Yeah, it's okay. I can't remember what
17 happened last week.

18 A PROSPECTIVE JUROR: Yeah, yeah.

19 THE COURT: How about the experience? Was it a good
20 experience overall?

21 A PROSPECTIVE JUROR: Yeah.

22 THE COURT: And could you be a fair and impartial
23 juror here today?

24 A PROSPECTIVE JUROR: Yes, yes.

25 THE COURT: All right. Anybody else? Yes, ma'am?

1 Oh, wait, I got number 4.

2 A PROSPECTIVE JUROR: I was on a jury in Franklin
3 County.

4 THE COURT: All right.

5 A PROSPECTIVE JUROR: And it's been years ago.

6 THE COURT: Was it civil or criminal? Do you
7 remember?

8 A PROSPECTIVE JUROR: I don't really know what the
9 difference.

10 THE COURT: Okay.

11 A PROSPECTIVE JUROR: It was a school district
12 against a demolition company.

13 THE COURT: Oh, that would be a civil case. Okay.
14 And anything about that experience that would make you unable
15 to be fair and impartial as a juror in this case?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: All right. Number 5?

18 A PROSPECTIVE JUROR: Yes. I served in the York
19 court five days. There was several cases I was on. The
20 biggest one was a child who was in possession of a firearm.

21 THE COURT: All right.

22 A PROSPECTIVE JUROR: That was guilty.

23 THE COURT: Okay. And would that experience affect
24 your ability to be fair and impartial?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: All right. Who else? You, sir, what
2 number are you?

3 A PROSPECTIVE JUROR: Eleven.

4 THE COURT: Eleven.

5 A PROSPECTIVE JUROR: It was an assault and battery
6 in Bel Air, Maryland. It was a hung jury.

7 THE COURT: All right. That experience have any
8 impact on you or affect you such that you could not be fair and
9 impartial here?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: No, okay. I saw some other hands. Yes,
12 sir, what number are you?

13 A PROSPECTIVE JUROR: Number 16.

14 THE COURT: Number 16. Tell me about what your juror
15 experience.

16 A PROSPECTIVE JUROR: Grand jury, Middle District of
17 Pennsylvania.

18 THE COURT: Okay. So for this district, a federal
19 grand jury?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: How long did you serve? Was it 18
22 months?

23 A PROSPECTIVE JUROR: Yes.

24 THE COURT: Now you know that the burden of proof for
25 grand jury is very different than a burden of proof at trial.

1 You know that, right?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: That experience, would that make you
4 unable to be a fair and impartial juror here?

5 A PROSPECTIVE JUROR: It will not.

6 THE COURT: Okay. How about anybody else? I saw
7 some other hands. Okay, the third row, gentleman?

8 A PROSPECTIVE JUROR: Number 51.

9 THE COURT: Okay.

10 A PROSPECTIVE JUROR: About 12, 13 years ago, it was
11 a county case. It was a drug dealer that was found guilty.

12 THE COURT: Okay. Anything about that experience
13 that you had in any way make you unable to be fair and
14 impartial here today?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Behind you, I see two hands.
17 Let's start with the lady.

18 A PROSPECTIVE JUROR: Fifty-six.

19 THE COURT: Okay.

20 A PROSPECTIVE JUROR: A criminal case in Bucks
21 County, Pennsylvania. And that was a mistrial. And a civil
22 case in Bucks County.

23 THE COURT: Okay. Either of those experience affect
24 your ability to be fair and impartial here today?

25 A PROSPECTIVE JUROR: No.

1 THE COURT: No, okay. Then the gentleman to your --
2 next to you. Are you 57, sir?

3 A PROSPECTIVE JUROR: Yes.

4 THE COURT: And how about your experience?

5 A PROSPECTIVE JUROR: Criminal case in Dauphin
6 County.

7 THE COURT: Okay. Was there a verdict returned?

8 A PROSPECTIVE JUROR: Yeah.

9 THE COURT: What happened?

10 A PROSPECTIVE JUROR: It was a murder trial. They
11 were convicted.

12 THE COURT: It was guilty in a murder case, okay.
13 How about that experience, would that in any way impact you or
14 make you unable to be fair and impartial here today?

15 A PROSPECTIVE JUROR: No.

16 THE COURT: Okay. All right. Okay. Let's go onto
17 the next. Now if you are selected to sit as a juror in this
18 case, would you be unwilling or unable for any reason to render
19 a verdict solely on the evidence presented in the trial and on
20 the law as it will be given to you by the Court putting aside
21 any ideas or notions about the law that you may have previously
22 held? All right. (No response.)

23 Have any of you ever attempted to represent yourself
24 in a legal matter in court? (No response.)

25 Have any of you ever filed a lawsuit against any

1 other person in either state or federal court? Yes, sir?

2 A PROSPECTIVE JUROR: Would that be like custody?

3 THE COURT: No. Okay. Yes, ma'am?

4 A PROSPECTIVE JUROR: I think back when I was a
5 teenager, I went to court. I got attacked. I got like
6 attacked by a group of other girls and we went to court. I
7 mean, that was years. I mean, I was in high school.

8 THE COURT: That was civil?

9 A PROSPECTIVE JUROR: It was in Maryland, I guess.

10 THE COURT: Did you have an experience that would
11 make it, your view here, to be unable to be fair and impartial?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: All right. Yes, sir?

14 A PROSPECTIVE JUROR: Twenty-five.

15 THE COURT: Twenty-five.

16 A PROSPECTIVE JUROR: Motor vehicle have anything?

17 THE COURT: You had a motor vehicle accident?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: All right. Did you sue the person or get
20 sued?

21 A PROSPECTIVE JUROR: It ended up settling out of
22 court.

23 THE COURT: Did you initiate the suit or were you
24 sued?

25 A PROSPECTIVE JUROR: Yeah, I was struck.

1 THE COURT: You were struck. Okay, so you were the
2 victim. Did you think the system worked that you -- to the
3 extent you participated in it?

4 A PROSPECTIVE JUROR: Yeah.

5 THE COURT: You did. Do you think that the
6 experience would make you unable to be fair and impartial here?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: No, okay. All right. Have you or anyone
9 in your immediate family ever belonged to a group or endorsed
10 an ideology which advocates the violent overthrow of the
11 Government of the United States? (No response.)

12 Next, are you familiar with an ideology called
13 sovereign citizen? Yes, sir? We got a couple people. What's
14 your number?

15 A PROSPECTIVE JUROR: Thirteen.

16 THE COURT: Thirteen. All right. Tell me what you
17 do.

18 A PROSPECTIVE JUROR: I deal with them at the Social
19 Security Administration. Sometimes when we are processing
20 sovereign citizen cards, people don't think that they have to
21 follow the guidelines. I've had people that say that their old
22 person has died and their new self has tried to claim benefits
23 on their past life because they don't feel that they're -- the
24 sovereign, they feel that's their dead and that's their old
25 energy and they want to claim all the benefits. Just stuff

1 like that.

2 THE COURT: Anything about that, what you've learned,
3 that would make you unable to be fair and impartial as a juror?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Okay. How about over here? Yes, ma'am
6 in the front row? You're number what?

7 A PROSPECTIVE JUROR: Thirty-five.

8 THE COURT: Tell me what you've experienced.

9 A PROSPECTIVE JUROR: I mean, I've heard of it. I've
10 seen things in the media about it. Somebody who believes they
11 are not subject to the laws of the land they live in, that they
12 are kind of their own country, so to speak.

13 THE COURT: Um-hum. So anything about what you've
14 read that would make you unable to look at solely the evidence
15 in the case and make a judgment fairly and impartially?

16 A PROSPECTIVE JUROR: I don't think so.

17 THE COURT: Okay. Who's next? Yes, sir, what number
18 are you?

19 A PROSPECTIVE JUROR: Forty-six.

20 THE COURT: All right. Tell me what you know.

21 A PROSPECTIVE JUROR: Just social media, like videos,
22 that sort of thing, interactions with police officers.

23 THE COURT: Anything about what you've read on the
24 internet about sovereign citizenship that would make you unable
25 to just look at the evidence in the case and make a judgment

1 fairly and impartially?

2 A PROSPECTIVE JUROR: Not really.

3 THE COURT: All right, anybody else? Okay. Now
4 you're all wearing masks, and I've told you that we do have
5 restrictions, obviously, in the building and you have to wear a
6 mask. The only exception in the courtroom is folks that are
7 talking. And they are going to be distanced. But with those
8 considerations in mind, is there anyone who would still feel
9 unsafe serving as a juror? All right. (No response.)

10 Is there anyone who would object to the requirement
11 wearing a mask throughout the trial? All right. (No
12 response.)

13 Is there anyone who's not been vaccinated against
14 COVID-19? All right. I'll tell you what, let's go through the
15 numbers.

16 A PROSPECTIVE JUROR: Number 2, not vaccinated.

17 THE COURT: Okay.

18 A PROSPECTIVE JUROR: Number 4, not vaccinated.

19 THE COURT: Anybody else?

20 A PROSPECTIVE JUROR: Number 6.

21 A PROSPECTIVE JUROR: Number 7.

22 A PROSPECTIVE JUROR: Number 9.

23 A PROSPECTIVE JUROR: Number 20.

24 A PROSPECTIVE JUROR: Number 31.

25 A PROSPECTIVE JUROR: Number 41.

1 A PROSPECTIVE JUROR: Number 50.

2 A PROSPECTIVE JUROR: Number 36.

3 A PROSPECTIVE JUROR: Number 48.

4 A PROSPECTIVE JUROR: Number 50.

5 A PROSPECTIVE JUROR: Number 44.

6 A PROSPECTIVE JUROR: Number 39.

7 A PROSPECTIVE JUROR: Number 57.

8 THE COURT: All right. Anybody else? I'm sorry,
9 ma'am?

10 A PROSPECTIVE JUROR: Number 53.

11 THE COURT: Fifty-three. Did I hear somebody else?
12 No. All right. Now is there anyone who would be unwilling to
13 notify the Court -- well, let me just explain this. We do have
14 a requirement that if somebody began to experience symptoms of
15 COVID during the trial or was exposed to somebody who was
16 experiencing symptoms, they have to notify the Court. Would
17 that be a problem? Could anybody not agree to do that? All
18 right, good. Thank you. (No response.)

19 All right. So what I'm going to do now is, I'm going
20 to do the white noise thing and I'm going to talk to Mr.
21 Dougherty -- yes, ma'am?

22 A PROSPECTIVE JUROR: Sorry. Your question was,
23 would you object to notifying you about, you know, being around
24 someone? I was technically exposed to somebody with COVID and
25 just -- I mean, the exposure was like a brief thing and it was

1 over a week ago.

2 THE COURT: Okay. And were you wearing a mask at the
3 time?

4 A PROSPECTIVE JUROR: No.

5 THE COURT: Were you within three feet of the person?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Do you know for how long?

8 A PROSPECTIVE JUROR: It was my oldest son. He has a
9 disability. And he stopped in my office and I gave him a card
10 to go pump his gas, so like I handed him a card. I did,
11 however, sanitize after he came back because I knew he wasn't
12 well and then found out after that he tested positive.

13 THE COURT: Okay.

14 A PROSPECTIVE JUROR: He went back to work on the
15 23rd.

16 THE COURT: This sounds like -- I mean, how long was
17 the contact? Sounds like 30 seconds or something?

18 A PROSPECTIVE JUROR: Yeah, that's what I mean. I
19 just want to make sure I'm being fully honest.

20 THE COURT: No, it's good to be honest. And you're
21 number 2?

22 A PROSPECTIVE JUROR: Number 2.

23 THE COURT: Okay. Anybody else? All right. Well,
24 the good news is everybody is wearing a mask around you and,
25 according to CDC, is protected. So all right. So what I'm

1 going to do then is I'm going to speak briefly with Mr.
2 Dougherty and Mr. Perri on the white noise, so you'll hear this
3 white noise stuff, and we'll talk and then I'll be right back
4 to you, okay. All right.

5 (Sidebar discussion held:)

6 THE COURT: Okay. Mr. Dougherty, can you hear me?

7 MR. DOUGHERTY: Yes.

8 THE COURT: Mr. Perri, can you -- let's get Mr. Perri
9 to put the ear phones in. Mr. Perri, can you hear me now.

10 MR. PERRI: I can, Judge.

11 THE COURT: Okay, great. The first thing I guess is,
12 are there any motions to strike for cause? Actually, before I
13 ask that, are there any follow-up questions for any particular
14 member of the panel that either of you thought I needed to ask?

15 MR. DOUGHERTY: No.

16 MR. PERRI: Judge, I really don't have any follow-up
17 questions. Maybe one with respect to the individual, I think
18 it's juror number 47, who has hearing issues. I'm still not
19 clear on how -- I know there's no speaker back there, so it
20 might be different if he's in the box, he might be able to hear
21 better. I'd like some clarification on that.

22 THE COURT: One thing we could do is we'd just strike
23 him. We've got so many people. I'm tempted rather than pursue
24 it given the numbers is just to excuse him.

25 MR. PERRI: No objection.

1 MR. DOUGHERTY: No objection.

2 THE COURT: There's no objection, Mr. Dougherty?

3 MR. DOUGHERTY: No.

4 THE COURT: Okay. I'm going to strike number 47.

5 And I'm thinking we probably should strike number 2 for the
6 same reason, just so there's no concern among other jurors. I
7 don't really feel comfortable letting her sit without further
8 discussion and more details about the fact that she's been
9 exposed to somebody. So I would propose we just strike her for
10 cause. Any objection, Mr. Dougherty?

11 MR. DOUGHERTY: No.

12 MR. PERRI: I don't think there's enough basis to
13 strike her, Judge. I mean, as I understood it --

14 THE COURT: I can excuse somebody for any reason.

15 MR. PERRI: Well, for cause. I mean, there has to be
16 a basis.

17 THE COURT: Well, I think there's a basis for cause.

18 MR. PERRI: Okay. I guess -- I mean, the Court can
19 obviously make that ruling. I don't see a basis for cause,
20 just for the record.

21 THE COURT: I'm going to strike her for cause. So
22 I'm going to excuse 47 and number 2 off the top. So now I'll
23 hear if there are -- so just again, and I think I've already
24 asked this, but just my understanding is then there are no
25 other follow-up questions. Correct, Mr. Dougherty?

1 MR. DOUGHERTY: Correct.

2 THE COURT: And correct, Mr. Perri?

3 MR. PERRI: Correct.

4 THE COURT: Then are there any applications to excuse
5 a juror for cause? I'll start with Mr. Perri.

6 MR. PERRI: No, Your Honor.

7 THE COURT: Mr. Dougherty?

8 MR. DOUGHERTY: No.

9 THE COURT: Okay. So then I think what we do is, we
10 will just seat the first 30, and then we will go about the
11 peremptories. And then Mr. Dougherty will exercise 10, and the
12 Government will get to exercise 6. Then we'll be down to 14.
13 And then the last two in the box will be the alternates. Does
14 that make sense, Mr. Dougherty?

15 MR. DOUGHERTY: Yes.

16 THE COURT: Mr. Perri?

17 MR. PERRI: Yes.

18 THE COURT: Okay, that's what we'll do. (Pause.)
19 The first 32, I've been corrected because I forgot my math.
20 Thank you very much.

21 (Sidebar discussion concluded.)

22 THE COURT: Okay. Thank you for being patient. So
23 here's what we're going to do. We're going to excuse a bunch
24 of you, all right. And to those folks who came in, it was
25 important that you came in. And you also probably get off the

1 wheel here, so you can check the box for a while, right. But
2 again, I want to thank those folks up front, and then we're
3 going to keep 32 of you here for a reason.

4 So what I'd like to do is, so there's a juror number
5 33, and I'd like you to switch places with number 2. All
6 right. And then I'd like number 2 -- everybody is going to
7 stay now who is 1 through 33 will stay except for number 2.

8 COURTROOM DEPUTY: You're already seated, so now
9 you're number 2.

10 THE COURT: And number 2, you're magically now number
11 33. Everybody from 33 on is excused. Thank you very much.

12 (Prospective jurors 33 on are excused and left the
13 courtroom.)

14 THE COURT: All right. So this is the next part of
15 the process, it's called peremptory challenges. There's that
16 long history in the common law, going back to England hundreds
17 of years, that when you pick a jury, both sides get to exercise
18 peremptory challenges.

19 And that means that they can strike you for any
20 reason they want; they don't like the color of the shirt you're
21 wearing. We don't ask and they don't tell. And they get to do
22 that, all right. It's part of a process. So we're down to 32,
23 right. So they're going to exercise their peremptories now.

24 You're just going to sit there. I'm going to sit
25 here. And there will be a clip board going back and forth.

1 And at the end of the day, we'll be left with 14. And then
2 we're going to excuse those folks, and then we're off to the
3 races. So just be patient with us.

4 One thing is, do you have your phones with you?
5 Okay, no phones. I got a reason. I should have told you that
6 at the beginning. But let's -- we don't want to be researching
7 or checking out the internet, so just lay off your phones. If
8 you want to -- well, we can all just sit quietly, I guess.
9 That will be a good idea. Rare day in this day and age. All
10 right, we'll do that.

11 (Peremptory strikes are exercised.)

12 THE COURT: We do things differently in my court, so
13 it's interesting to watch it be done this way.

14 COURTROOM DEPUTY: Folks, we have our jury. I'm
15 going to read out 14 numbers. If this is your number, if your
16 lucky number comes up, then you stay seated. If your number is
17 not read, you're going to be free to go. We're only going to
18 keep 14.

19 So our jurors are going to be number 6, number 7,
20 number 9, number 10, number 15, number 16, number 18, number
21 20, and number 22, 23, 24, 27, 29, and 30. If your number was
22 not called, you're free to go.

23 THE COURT: Well, actually let's just do this though.
24 Rather than leave the room, let's make sure we have the right
25 14 before we let everybody go. So if your number was --

1 basically if you weren't called, you want to step out of the
2 pews. And then let's make sure we have 14.

3 COURTROOM DEPUTY: Number 1 is now going to be number
4 6, so we're going to be down here. Number 7 is going to be
5 number 2. If you can remember where you're sitting after the
6 break, this is how we're going to start the trial. Number 3 is
7 going to be number 9 or was number 9. Number 10 is going to be
8 number 4. Number 15 is going to be seat 5. Number 16 will be
9 number 6. Number 7 will be 18. Number 8 in the back row will
10 be 20.

11 Why don't you sit for now and we'll see what we can
12 do here. Number 22 will be seat 9. Number 23 will be seat 10.
13 Number 24 will be seat 11. And number 27 will be seat 12.
14 Number 29 will be seat 13. And 30 will be seat 14.

15 If you guys can just have a seat in the back over
16 there for a minute, that would be great.

17 THE COURT: We're going to do a sidebar.

18 (Sidebar discussion held:)

19 THE COURT: Okay. Can you hear me, Mr. Dougherty?

20 MR. DOUGHERTY: Yes, I can.

21 THE COURT: Mr. Perri?

22 MR. PERRI: Yes, Your Honor.

23 THE COURT: So we have an issue. A juror just went
24 up to the deputy clerk and said there's some reason she can't
25 serve. So I could question her. I'm not sure where to put her

1 when I question her in this configured courtroom is the
2 problem. Is there a microphone there? Okay, let's do that.
3 Then we're going to arrange to have her brought in.

4 MR. PERRI: Judge, that might be a good question to
5 ask everybody before we dismiss all of the other possible
6 jurors. I don't think we really asked if anybody had prior
7 commitments that would make it difficult for them to serve.

8 THE COURT: I'm not sure this is a prior commitment.
9 I did ask if anybody had a medical condition of any kind.

10 MR. PERRI: I mean, having to be somewhere or not
11 being able to miss work.

12 THE COURT: Right, yep, right.

13 MR. PERRI: I just bring that up because that's often
14 the question that's asked.

15 THE COURT: Right. It's a question we always ask,
16 too, and I guess we just overlooked it.

17 COURTROOM DEPUTY: Typically, Judge, when we pull
18 them in --

19 THE COURT: Let's bring her up.

20 (Juror Number 20 was brought up to sidebar.)

21 THE COURT: Okay. What juror number are you?

22 A JUROR: Number 20.

23 THE COURT: I understand there's an issue?

24 A JUROR: I only drive 25 miles from my home. My
25 husband had to take off work today to bring me, and he's the

1 only one working right now in our household, so I don't really
2 want him to have to take off work to be able to bring me here.

3 THE COURT: Okay. All right. Let me ask you to go
4 back to your seat for a second, okay. Thank you.

5 (Juror Number 20 returned to her seat.)

6 THE COURT: Mr. Perri, do you have any proposals what
7 to do?

8 MR. PERRI: Judge, I watched her reaction when she
9 was told that she had been selected. She had a visceral
10 reaction. And I've been watching her body language, she
11 doesn't want to be here.

12 THE COURT: Oh, no, she's crying. I don't think
13 there's any doubt. Mr. Dougherty, do you have a proposal what
14 to do? Should we strike this juror?

15 MR. DOUGHERTY: Yes.

16 THE COURT: Now if we strike the juror, which I'll
17 do, I think that's the -- and the Government agrees with that?

18 MR. PERRI: I have no objection to that.

19 THE COURT: Okay. So we will strike the juror. The
20 question now is, do we put somebody back in the box? Actually
21 we could do that because we could just pick whatever juror the
22 last person who wasn't selected, right. We can do that.

23 MR. DOUGHERTY: Yes.

24 COURTROOM DEPUTY: Well, the last person --

25 THE COURT: So in other words --

1 (The Court and the courtroom deputy confer.)

2 THE COURT: So what we'll have to do is just proceed
3 with just one alternate.

4 MR. PERRI: Okay.

5 THE COURT: Unless -- I don't know -- the only other
6 way to proceed would be somebody goes back and decides to not
7 follow through with the peremptory. I mean, I don't know what
8 the alternative is. What do you think?

9 MR. DOUGHERTY: Again, that would be acceptable as
10 far as I'm concerned.

11 THE COURT: Mr. Perri?

12 MR. PERRI: I have no objection.

13 THE COURT: Okay. We'll just do that then. All
14 right.

15 (Sidebar discussion concluded.)

16 THE COURT: Ma'am, you're going to be excused. Okay.
17 So all of the folks who have been excused, I do want to thank
18 you very much for your service and wish you a good day. All
19 right. You may leave, thank you.

20 (The remaining prospective jurors were excused and
21 left the courtroom.)

22 THE COURT: And in the back row, you can all move
23 down. So I think you probably all need a break. So what we're
24 going to do is we're going to administer the oath. You're now
25 going to be sworn in as jurors in the case. Then we're going

1 to take a short break, all right.

2 During that break, it's very important, and it's
3 going to be important throughout the trial, that you do nothing
4 in the way of research to go on the internet, to look at
5 Google, to try to learn anything about this case. All right.
6 I can't emphasize how important it is that you do not do that.

7 We actually had a case in New Jersey recently where a
8 juror did it. It threw the trial in disarray. The judge
9 actually fined the juror all of the money that had been spent
10 to convene the jury. I obviously don't want to ever have to do
11 that, so please do not, because it's critical to decide the
12 case solely based on the evidence that's introduced at trial.
13 That's why we do that.

14 So we're going to take that quick break after we get
15 you sworn in. Then I'll have you come back, and I'll give you
16 some preliminary instructions, and we'll talk about what to do
17 next, and then we have lunch and scheduling. Okay. All right.
18 So if you would all please rise.

19 (Jury was sworn.)

20 THE COURT: All right. We'll take a break. And --
21 do you want to do a 15-minute break to use the restrooms? Is
22 that enough time? You tell me, what do you want?

23 THE JURY: Fifteen.

24 THE COURT: Okay. We'll bring you back in 15
25 minutes. Thank you very much.

1 COURTROOM DEPUTY: All rise.

2 (Jury left for a recess at 11:24 a.m.)

3 THE COURT: Have a seat real quick. We'll excuse --
4 I know Mr. Dougherty wants to use the restroom, we'll do that.
5 Come back in about 10 minutes so we can quickly talk about what
6 we want to do schedule wise before the jury is brought in.

7 MR. PERRI: Judge, before I forget. You might want
8 to specify for the record which alternate juror is now a member
9 of the panel.

10 THE COURT: We'll do that when we get back because
11 we'll have to figure out what the numbers are and also let that
12 alternate juror know so he knows he's not -- like he really
13 needs to pay attention.

14 We normally don't tell -- in my district, we don't
15 tell you who's an alternate. And that's precisely because they
16 have to pay attention. But why don't we take a break. I know
17 Mr. Dougherty has got to use the restroom, so let's do that.
18 We will all try to be back here in 10 minutes.

19 (Recess was taken at 11:26 a.m. and proceeding
20 reconvened at 11:43 a.m.; without the jury.)

21 THE COURT: Let's quickly talk about timing. It's
22 not going to take me long to talk about the preliminary
23 instructions. Do you want to go right to openings?

24 MR. PERRI: It's 11:42, Judge. I mean, I would
25 probably just rather do it after lunch. But -- how long do you

1 think you'd be? Roughly?

2 MR. PERRI: Oh, probably 15 minutes.

3 THE COURT: Fifteen?

4 MR. PERRI: Twenty minutes maybe.

5 THE COURT: I mean, I don't want to -- well, okay.

6 Mr. Dougherty, how long will you be in opening?

7 MR. DOUGHERTY: I don't expect to be more than five
8 minutes.

9 THE COURT: You know, why don't I tell the jury -- I
10 would think that -- I would suggest we go right to openings and
11 then we break, but I tell them up front what we're going to do.
12 And then that way then you have lunch and get your first
13 witness ready and we hit the ground running. If that works? I
14 mean, you know.

15 MR. PERRI: I'm just trying to take a few minutes to
16 collect my thoughts.

17 THE COURT: I'll give you a few minutes now though.
18 I mean, I understand that. But I'm a little worried to bring
19 them in for 10 minutes. Well, actually I'll tell you what,
20 maybe we'll bring them in, I'll read them the preliminary
21 instructions, and then, okay, well, if you're going to be at a
22 long then you go right away but your witness is ready to go
23 right away as soon as you're finished.

24 MR. PERRI: After lunch.

25 THE COURT: Okay. Now I'm going to defer to them if

1 they find out how long they want for lunch.

2 MR. PERRI: Yes.

3 THE COURT: I haven't looked around this town.

4 COURTROOM DEPUTY: Strawberry Square has everything.

5 THE COURT: How far is that -- we need to get this
6 case done. Mr. Dougherty, that works for you?

7 MR. DOUGHERTY: Um-hum.

8 THE COURT: That's a yes?

9 MR. DOUGHERTY: Yes.

10 THE COURT: Okay. Thank you very much. That's what
11 we'll do. We'll bring them in then. That's what we'll do.

12 (Jury is brought in at 11:45 a.m.)

13 THE COURT: Welcome back. So here's what we're gonna
14 do now. I'm going to read you preliminary instructions,
15 discuss with you kind of the general principles of law and kind
16 of give you some instructions to guide how you view the
17 evidence coming in, and then talk about your deliberations
18 briefly.

19 And then what we're going to do is we're going to
20 break for lunch. We give you an hour lunch. I'm told there
21 are places very, very closeby. I'd like you to try, if you
22 can, get back in time so we can start because then we'll start
23 right away. All right.

24 Now just a couple things. So we excused one juror,
25 so we have one alternate juror, okay. I'm not going to tell

1 you who it is because I want you all to pay attention. And
2 then at the end of the trial, the one alternate will be
3 excused, but kind of put on hold just in case everything -- so
4 that's what we're going to do.

5 But when you go back to deliberate, one of you is
6 going to be put on hold, on ice, if you will, and not
7 participate in the actual deliberations, which is a little
8 frustrating, but we have to do that just in case somebody got
9 ill or something like that, okay. All right.

10 So let's -- you've already been sworn, right, before
11 we -- now I kind of already told you this when I gave you my
12 opening instructions, which is, what is your role? And your
13 role is to find the facts. And it's the facts based on the
14 evidence.

15 Now what's evidence? Evidence is what comes out of
16 witnesses who are under oath. And they sit there. Evidence is
17 documents, exhibits that are introduced during trial, all
18 right, and that's evidence. And there's two kinds of evidence
19 under the law, there's direct evidence and there's certainly
20 evidence.

21 And direct evidence is when somebody walks in the
22 door, took the stand, and said, it's raining outside. That's
23 direct evidence. It came out of the mouth of a witness.
24 Circumstantial evidence is a guy walks in the door wearing a
25 raincoat, umbrella, soaking wet, sits in the stand, and you,

1 using your reason, draw an inference, a conclusion, that it's
2 raining outside. The guy just came from outside. That's
3 circumstantial evidence.

4 The law actually doesn't distinguish between direct
5 and circumstantial evidence. It doesn't make one better than
6 the other. And only the jury decides what weight to give any
7 kind of evidence. That's your job, it's not my job, right.

8 Now let me tell you what's not evidence. What's not
9 evidence is what I say, and what's not evidence is what the
10 lawyers say. And in this case, what's not evidence is what Mr.
11 Dougherty says when he is acting as a lawyer. That's not
12 evidence, that's not to be considered by you as evidence, all
13 right. All right. So that's what your overall function is.

14 And you are going to apply the facts -- or apply the
15 law rather than I give you, and you do have to accept what I
16 give you as the law, you apply the law to the facts to make
17 your verdict. Now whatever your verdict is, it has to be
18 unanimous, and all of you will have to agree on it for there to
19 be a verdict.

20 And at the end of the case, when you retire to
21 deliberate, that's when you will discuss the case. You're not
22 going to discuss it with each other between now and the end of
23 the case. You don't discuss it with anybody. And you want to
24 keep an open mind throughout the trial. And then when you go
25 back to deliberate, you will bring your views and you will have

1 an opportunity to discuss your views with those of your fellow
2 jurors. And you will come to a verdict. All right.

3 Now I mentioned that what I say is not evidence, and
4 you should not take anything that I say or do during the trial
5 as evidence of what I think the verdict should be. My role is
6 to make whatever legal decisions have to be made during the
7 course of the trial and to explain to you the legal principles
8 that will guide your decisions.

9 And you must apply my instructions about the law.
10 Each of the instructions is important. You must not substitute
11 your own notion or your own opinion about what the law is or
12 ought to be. You must follow the law as I give it to you
13 whether you agree with it or not.

14 You're to perform your duties fairly and impartially.
15 Do not allow sympathy or prejudice or fear or public opinion to
16 influence you. You should also not be influenced by a person's
17 particular circumstances, their race or color or religion or
18 gender, anything else. You're not to bring sympathy,
19 prejudice, bias, fear to the table. You're supposed to bring
20 your reason, apply your common sense to the evidence, to the
21 facts.

22 Now I mentioned you need to keep an open mind.
23 That's important. Do not make up your mind about the verdict
24 until you have heard all of the evidence and I have given you
25 the final instructions at the end of the trial and you've had

1 an opportunity to discuss the case with your fellow jurors.

2 You need to keep an open mind throughout that process.

3 And I mention that you should not discuss the case
4 until the end of trial when you go back to the jury room to
5 deliberate. You need to allow each juror the opportunity to
6 keep an open mind throughout the entire trial. Now you may
7 talk with your fellow jurors about lunch, about other things,
8 other events, just not about the case, all right.

9 You're not allowed to speak with the parties during
10 the case. So if you happen to run into one of the parties in
11 the hallway, don't be offended if they don't talk to you,
12 because they know the rules, too, and they don't want to put
13 you in an awkward situation, so you wouldn't have any contact
14 with them.

15 And you don't want to research the case. I've talked
16 about this a lot, right. We don't want to go on the internet,
17 no social media, no Facebook, no research. And you don't want
18 to talk to anybody outside of the courtroom about the case.
19 And, in fact, if somebody does talk to you about the case, you
20 need to report it to the courtroom deputy as soon as possible
21 when you get back, okay, including a fellow juror.

22 If somebody wanted to talk to you about the merits of
23 the case, you shouldn't do that, please tell the courtroom
24 deputy. You obviously need to tell your family or whoever you
25 live with that you're here, so you can do that.

1 And -- but all you have to do is tell them, look, the
2 judge told me I'm not allowed to talk about the particulars of
3 the case, and then just save it. You can talk to them as much
4 as you want when the trial is over, all right.

5 You don't want to watch the news, just in case. I
6 don't know if the case is being covered by the media or not.
7 But you don't want to pay attention to that. If you happen to
8 hear something on the radio, turn it off, don't listen to it.

9 Then we mentioned about avoiding your computer and
10 any kind of cell phone or other research. And you basically
11 don't want to try to find out or to get information about the
12 case, period, because that will contaminate your brain and you
13 want to limit it to the evidence that I've talked about. All
14 right.

15 And then lastly, you should not worry at all and you
16 should not consider or concern yourselves with the possible
17 punishment that might be imposed if you return a verdict of
18 guilty. That is not for you to consider, all right.

19 Now you've already seen these, what we used to call
20 sidebars, because they used to occur over here, but now we do
21 it through these microphones. So that can happen during the
22 trial. It may be necessary if there's an objection. So the
23 lawyers or Mr. Dougherty, when he's acting as a lawyer, can
24 object to certain pieces of evidence.

25 And, in fact, so we have rules, we have rules of

1 evidence that govern this proceeding, rules of procedure that
2 govern this proceeding. And both sides, because the lawyers,
3 right, are educated in this, well, they are expected, and Mr.
4 Dougherty, even though he's not a lawyer, he's acting as a
5 lawyer, he has to abide by those rules. And I will have to --
6 my job is to enforce those rules against both sides.

7 So you may see that occur during the case, you may
8 see us take a sidebar and discuss issues that are legal issues
9 that really are of no concern to you, but I have to make a
10 ruling. And you should not consider my granting or sustaining,
11 it's called, an objection or denying or overruling an objection
12 as evidence. It's not.

13 Now I may tell you to strike. I may say you are to
14 ignore something. And you need to follow that instruction. I
15 may strike something from the record. You need to follow that
16 instruction and treat it as if it never happened, okay.

17 Note taking. You're going to be given pads, and you
18 may, but you are not required to, take notes during the trial.
19 And a couple things about that. So we have a court reporter.
20 And so you're not a transcriber, obviously, and so it's not
21 your job to transcribe everything that occurs in this trial.

22 And you need to be careful about attaching too much
23 weight to your notes because you really need to be paying
24 attention to the evidence because ultimately when I said, for
25 instance, the words that come out of the mouth of the witness

1 is evidence, but it's your recollection of that testimony that
2 controls.

3 It's what you think you heard is what controls, not
4 what a lawyer tells you or what Mr. Dougherty tells you the
5 witness said when they have closing arguments, it's what you
6 remember that counts. So that's why you want to make sure that
7 your note taking doesn't distract you from really listening and
8 paying attention at trial.

9 And when you get back in the jury room, you're not to
10 discuss your notes, right, until the end when you are
11 deliberating, but -- and even then you don't want to attach too
12 much importance to it. You don't want to say just because some
13 juror wrote down something, that means it must have happened.
14 No, it's your recollection individually that controls.

15 The notes will be collected before you leave here at
16 the end of the day, so you won't take them home with you. They
17 will be -- and after the trial, if I accept your verdict, we
18 will destroy all the notes. So they're not shared with anybody
19 else.

20 During the trial, you're going to hear questions from
21 both sides. Jurors don't get to ask questions. But if you
22 were unable to hear a witness or a lawyer, you want to raise
23 your hand just to kind of clue me in. That would be helpful.
24 Let me know, I can tell them to speak up. If someone needs a
25 restroom or a break all of a sudden, don't hesitate to raise

1 your hand and I will take care of that. All right.

2 Now what's going to happen after you come back from
3 lunch is we're going to start with opening statements. The
4 Government goes first because the Government has the burden of
5 proof, all right. And then Mr. Dougherty will be permitted an
6 opportunity to give an opening statement.

7 An opening statement, again, it's not evidence and
8 it's not even argument. It is to give you a preview of what
9 each side expects you will hear and see during the trial. All
10 right. And so that's all it is.

11 Now after we have opening statements, the Government
12 will go right away and present evidence, call witnesses,
13 introduce documents, that kind of thing. And then after the
14 Government presents its case, then the Defendant has an
15 opportunity to present his case. He's not obligated to present
16 his case.

17 Remember, there's -- we have a constitutional right
18 here that you are innocent until proven guilty. The burden of
19 proving guilt always resides with the Government. It's beyond
20 a reasonable doubt. The Defendant does not have to put on a
21 case and you can't hold it against the Defendant. I'm going to
22 instruct you, you may not hold it against the Defendant if the
23 Defendant does not present a case.

24 After each side has had an opportunity, if the
25 Defendant wants to present evidence, we will have closing

1 arguments. And those are different than opening statements.
2 That is where the lawyer or Mr. Dougherty gets to argue to you.
3 Again, not evidence. You don't accept it as a fact.

4 But you listen to it because they'll have the
5 opportunity to draw conclusions for you. They'll argue what
6 they think the evidence in its totality shows, all right.
7 That's argument. It's different than an opening statement.

8 Then after you get the closing arguments, I will give
9 you the final instructions. And I'll tell you then what the
10 elements of the offenses are, okay, and what elements you need
11 to look at. And I will also give you written copies, you'll
12 each have a written copy with you to take back into the jury
13 room that you can look at so you know what has to be
14 established and what the rules are. All right.

15 Now one other thing. I mentioned direct and
16 circumstantial evidence, and I told you what is evidence and
17 what's not evidence. Let me just talk though a little bit more
18 about witness testimony. Your job as a finder of fact is to
19 determine the credibility of witnesses.

20 And when you make that determination, you do a number
21 of things. You bring common sense to the table. And you can
22 consider, among other things, the witness's demeanor. We will
23 require the witnesses to remove their masks so you can see
24 their face and you can draw a sense of credibility.

25 That's your job, it's not my job. And you can

1 consider the testimony of one witness as opposed to other
2 witnesses. And you can see are they consistent; are they
3 inconsistent; are they consistent in ways; are they
4 inconsistent in other ways; is the testimony consistent in and
5 of itself inherently; is it logical and consistent.

6 And you can decide to consider testimony to be
7 credible or not credible. You can decide a witness's testimony
8 to be credible in part and not in part. That's up to you to
9 decide. And it's up for you to decide how much weight to give
10 each witness's testimony. And that is solely your job.

11 And you can consider whether the witness has any
12 biases or prejudices or motives. You can consider whether the
13 witness has any special relations to other parties in the case.
14 And basically any factor that you would normally consider in
15 deciding whether something is worthy of belief and what
16 somebody says is worthy of belief is what you should apply.
17 All right.

18 And finally, the weight of the evidence doesn't
19 depend on the number of witnesses who testify. What is more
20 important is how believable you find the witnesses to be and
21 how much weight you think a witness or number of witnesses'
22 testimony deserves. All right.

23 So that's basically what will guide you. And if you
24 remember, I mentioned there's three counts. The first count is
25 mailing threatening communications. And then the other two

1 counts are interstate communication with threat to injure.
2 I'll tell you more about what those charges, what the elements
3 of those charges are at the end of the case as well. All
4 right.

5 So it's just about noon. We aim to get back here at
6 1:00, and then we'll start.

7 COURTROOM DEPUTY: It's about five after judge.

8 THE COURT: You want the five minutes after? All
9 right, we'll give you until five after. Thank you very much.
10 You're excused for lunch.

11 (Jury left for a lunch recess at 12:05 p.m.)

12 THE COURT: Anything we need to address before we
13 come back?

14 MR. PERRI: No, Your Honor.

15 THE COURT: Mr. Dougherty?

16 MR. DOUGHERTY: Well, I had some things, but I needed
17 to get copies made.

18 THE COURT: Did you get the copies from the DC case?

19 MR. DOUGHERTY: Yes, I did.

20 THE COURT: Okay. So you've got what you need?

21 MR. DOUGHERTY: I got that part, but I need to get
22 copies to attach to this, which was my final response to Mr.
23 Perri's objections to my suggestions relating to the jury
24 instructions.

25 THE COURT: Okay. Now one thing about jury

1 instructions -- you're talking about the final instructions?

2 MR. DOUGHERTY: Yes.

3 THE COURT: So we don't need to address that right
4 now.

5 MR. DOUGHERTY: Okay.

6 THE COURT: But what you should do is try to get that
7 ready, prepared during the lunch break so I can address it
8 later today or first thing in the morning.

9 MR. DOUGHERTY: That's what I was --

10 THE COURT: Perfect.

11 MR. DOUGHERTY: -- wondering.

12 THE COURT: Anything else then? I'll see you all,
13 why don't we aim to be back just a little tiny -- like around
14 1:00 so we can start right at 1:05. Okay, thank you.

15 (Lunch recess was taken at 12:06 p.m. and proceeding
16 reconvened at 1:05 p.m.; without the jury.)

17 THE COURT: All ready to go? Okay.

18 MR. DOUGHERTY: Your Honor, did you want me to
19 address that now or later?

20 THE COURT: The jury instruction?

21 MR. DOUGHERTY: No, it was about my response to his
22 objection to my closing jury instructions.

23 THE COURT: Yeah, we'll take that later so we can get
24 started. I had to have a phone call, so that's why we're a
25 little bit late.

1 (Jury was brought in.)

2 THE COURT: Everybody had lunch? We're good? All
3 right. Mr. Perri.

4 MR. PERRI: Good afternoon. As we were introduced
5 yester -- earlier, not yesterday, but this morning, my name is
6 David Perri. I work for the U.S. Attorney's office. I
7 represent the United States of America in this matter, along
8 with my co-counsel, Shawn Adkins. I'm very happy to be with
9 you here today.

10 My job is to prove that this Defendant committed the
11 offenses with which he's been charged, that is, mailing
12 threatening communications and interstate communication of a
13 threat, beyond a reasonable doubt. I look forward to meeting
14 that burden with you here today, and I wouldn't have it any
15 other way.

16 So I'm going to give you a preview, that's what
17 opening statement is, it's a preview. I'm going to give you a
18 preview of the elements in just a minute. But first I want to
19 give you some background as to these particular charges, the
20 nature of these charges for which the Defendant is on trial.

21 I'm also going to talk to you briefly about a few
22 concepts which may prove to be important in this case inasmuch
23 as they usually are important in almost every criminal case, in
24 every criminal trial.

25 So the charges in this case, mailing threatening

1 communications and interstate communication of a threat. But
2 first, a little bit of background. Talking about threats.
3 Sometimes words are not just words. Sometimes words have
4 consequences, legal consequences.

5 We live in a country, thank goodness, where we can
6 say pretty much whatever we want. I say pretty much because
7 there are some limits. There are some limits. If a person
8 communicates a true threat of harm to somebody else, that's not
9 something that's gonna be protected under the constitution.

10 That is why there is an outer limit as to what is
11 protected under the constitution, under the free speech clause
12 of the constitution. If a person communicates a true threat of
13 harm to somebody else, that crosses the line, that outer
14 boundary of what's gonna be protected.

15 So in other words, if you go beyond that line, you're
16 on your own, okay. You can be prosecuted for that. That's
17 illegal. So what does it mean to say that a threatening
18 communication is not free speech? What does that mean?

19 Well, it's gonna be against the law. Making threats
20 is illegal under state law and federal law. What makes it a
21 federal violation is this connection to interstate commerce.
22 So if somebody transmits a threat in interstate commerce, then
23 we have federal jurisdiction over that matter.

24 Any time there's a connection to interstate commerce,
25 Congress has the authority under the constitution to legislate

1 on that subject. So Congress has the authority to make that
2 conduct illegal. So that's why we're here in federal court.
3 Okay. That's the hook.

4 So it's illegal. But why? So you might say to
5 yourself, well, that's a dumb question because we just don't do
6 that kind of thing, it's wrong, it's not acceptable. And if
7 you say that to yourself, you're right. But there's a little
8 bit more to it.

9 You see, there's some really good reasons why this
10 conduct has to be illegal, especially when threats are directed
11 at public officials. In this case, federal judges. You see,
12 we, as citizens in this country, with our system, with our
13 judiciary, with the role that judges play in our constitutional
14 system, we want our judges to be free of influence and free of
15 pressure.

16 We want them to be free to do the right thing and
17 make the right decision. It's incredibly important. Federal
18 judges are responsible for upholding the United States
19 Constitution, so we want them to be able to make that decision
20 and do what's right without having to worry that if they rule
21 in a certain way or if they rule in favor of a certain party,
22 somebody might come after them, hurt them, hurt their family.

23 This is serious stuff, and law enforcement takes it
24 very seriously. So just as an example, you know, if you have a
25 judge who says to himself or herself, well, I've carefully

1 considered all the facts, and I really thought freely and
2 carefully and considered the law that applies, and based on
3 that, in light of the analysis that I have to take, I think
4 that the decision has to be this. I think that the proper
5 ruling is in favor of this party. I think the ultimate
6 decision in this case is against that party.

7 But then the judge says or just hesitates, wait, if I
8 do that, is this person who has threatened me going to come
9 after me and my family? Wow. That's a tough situation.
10 That's a tough situation having to choose between doing the
11 right thing and insuring the safety of yourself and your
12 family. That's serious stuff.

13 We don't ever, as Americans, want our federal judges
14 to be in that situation. So as I said, law enforcement takes
15 this very seriously. We don't tolerate it. We can't afford to
16 tolerate it. Not only is it a possibility that somebody's life
17 might be at stake, but, as we all know, these threats can be
18 extremely disruptive, extremely disruptive.

19 Anybody who's ever been in a building that had to be
20 evacuated just because somebody made a phone call knows exactly
21 what I'm talking about. It's a drain on law enforcement
22 resources. It's a diversion of precious resources. Very
23 disruptive.

24 They can be disruptive even if the threat isn't, for
25 whatever reason, carried out, right. So as I said, threats are

1 words, but not just words, words that have consequences.

2 So the elements of this charge, let's look at the
3 first one first. Mailing threatening communications. The
4 Defendant knowingly used the U.S. mail to send a communication;
5 the communication contained a statement that a reasonable
6 recipient would view as a true threat to injure a person; the
7 Defendant either intended the communication to be a threat or
8 had knowledge that it would be viewed as a threat; and the
9 communication was addressed to a United States judge.

10 Interstate communication of a threat. The Defendant
11 knowingly sent the communication in interstate commerce; the
12 communication contained a statement that a reasonable recipient
13 would view as a true threat to injure a person; and the
14 Defendant either intended the communication to be a threat or
15 had knowledge that it would be viewed as a threat.

16 The judge is going to give you instructions at the
17 end of this case, and he's going to do a more thorough job.
18 But something else that's gonna be pertinent and worthy of your
19 consideration as you hear the evidence is going to be this
20 concept of a true threat.

21 The thing with the law is, there's so many terms that
22 sort of have special meanings and significance, and it's the
23 Court's job to instruct you on that. But again, a preview of
24 what's gonna be in the case. A true threat is when the
25 Defendant makes a statement in a context or under such

1 circumstances wherein a reasonable person would foresee that
2 the statement would be interpreted by those to whom the maker
3 communicates the statement as a serious expression of an
4 intention to inflict bodily injury on an individual.

5 So -- and that may seem to you like a whole lot of
6 words to describe something that's pretty much common sense.
7 But like I said, in the law, we have to be precise about these
8 things.

9 What are elements? Elements are like building blocks
10 of charges, building blocks of charges. So this is a word that
11 a lot of people may not be familiar with, and I just wanted to
12 touch on it a little bit. You see, the United States does not
13 have to establish every disputed fact in this case. We only
14 have to establish the elements beyond a reasonable doubt.

15 Not every factual detail in a criminal case rises to
16 the level of being an element. Not every factual detail is
17 essential to the resolution of a case. So the difference
18 between an element and any other factual detail is kind of like
19 the difference between a corner stone and a light fixture in
20 terms of the structure of a house.

21 If you don't have the corner stone of the building,
22 you got a problem. If you don't have the light fixture, it
23 really doesn't matter. That's it in a nut shell.

24 Another thing that the judge touched on in his
25 opening instructions to you is something that I think bears

1 repeating and just a little bit of discussion right now. And
2 that is the difference between direct and circumstantial
3 evidence.

4 And the reason I want to mention that is because
5 circumstantial evidence usually plays an important part in
6 every criminal trial. So two basic types of evidence. One is
7 direct. That will be like a video showing the commission of a
8 crime, eyewitness's testimony, semen in a rape case, you know,
9 something like that.

10 But circumstantial evidence is a little bit different
11 because it depends on an inference. It depends on an
12 inference. It involves drawing an inference from circumstances
13 or from other facts.

14 And here's the thing. Here's the important thing.
15 You can use that to reach a conclusion. And you do it every
16 day. You rely on circumstantial evidence every day. You might
17 not think to yourself, oh, that's circumstantial evidence, but
18 you do every day.

19 So the judge gave you an example, and I'd also like
20 to give you an example so when you see this evidence or hear
21 this evidence or we talk about it later in closing statements,
22 you'll be like, oh, yeah, that's what he was talking about.
23 Okay. You can recognize it for yourself.

24 But again, the important thing is that you can rely
25 on circumstantial evidence to the same extent as direct

1 evidence. It's just as important. It's just as reliable. And
2 you can use circumstantial evidence to reach a conclusion of
3 this Defendant's guilt.

4 So let's say early in the morning, you're ready to go
5 to work. You get in your car, and you are pulling out of your
6 driveway, and you happen to notice that the neighbor's grass is
7 getting kind of long. You don't think much of it. You go to
8 work.

9 You come back home 5 or 6:00, pull into your
10 driveway. You happen to look to the side and see that same
11 neighbor's lawn, and now the grass is real short, and it's got
12 those pretty stripes all the way across, you know, that the
13 lawnmower makes.

14 And you say to yourself, oh, he must have cut his
15 grass while I was at work. So the appearance of the grass, as
16 you arrived home is circumstantial evidence of the fact that
17 the grass was cut while you were gone. That's it. That's all
18 it is.

19 And you might say, well, duh, that's just common
20 sense, I don't need a fancy word for that. And interestingly
21 enough, common sense will be an important tool at your disposal
22 in this case. You don't have to leave your common sense at the
23 door to be a juror. In fact, it will be an extremely important
24 tool for you in evaluating the evidence in this case.

25 So opening statement is really just an overview, it's

1 a preview. It's not intended to be argument. It's not
2 intended to be presentation of evidence. It's an overview.
3 And I was thinking to myself, how would I give an overview of
4 this particular case? And I gave that some thought.

5 Then I said to myself, you know what, let's just cut
6 to the chase. In this case, you're going to hear about how
7 this Defendant became increasingly angry and frustrated with
8 his lack of success in a bunch of civil lawsuits, so angry and
9 so frustrated that he resorted to an extreme measure.

10 He resorted to an extreme measure to get those judges
11 to do what he wanted them to do. He threatened them. When
12 you've heard all the testimony and seen all the evidence, and
13 we're going to put on some witnesses, and you're going to see,
14 you're going to get a sense of the context, you're going to get
15 a little bit of the sense of the history of how we got to this
16 point, and when you have seen that and heard everything, you're
17 going to know that this Defendant committed these offenses
18 beyond a reasonable doubt. Thank you.

19 THE COURT: Thank you, Mr. Perri. Mr. Dougherty.

20 MR. DOUGHERTY: First off, to reintroduce myself, I
21 am Keith Dougherty, I am the Defendant in this case. And I
22 just want to make a couple quick points. First, I'm extremely
23 thankful to your efforts and your willingness to be part of
24 this proceeding.

25 You are, in fact, the first valid tribunal that I've

1 been able to face in what has been a long and torturous battle
2 between Keith Dougherty and what is described as the judiciary
3 of the Middle District of Pennsylvania.

4 It happened that it began innocently enough, but in
5 fact, it did evolve into a circumstance. And from a common
6 sense standpoint, what the evidence will show is it's about one
7 issue and one issue only.

8 This judiciary absolutely will do whatever it takes
9 to prevent me from appearing in a courtroom representing
10 myself. Now you would think that's an unusual circumstance,
11 but it will come through every one of these supposed decisions
12 that were eluded to when, in fact, every one of the cases are
13 still open, they're still pending, because there was no valid
14 tribunal jurisdiction when the cases were, in fact, dismissed.

15 Came about from a simple process where they were
16 trying to prevent me from representing myself and my companies.
17 They would, in fact, instruct their clerks to, in fact, refuse
18 to enter default when, in fact, my opponent had not pled and
19 defended in accordance with the law.

20 I'll demonstrate all that for you. You'll have
21 copies of what that amounts to. And it's a very simple
22 process. But the reason that this is so perplexing is because
23 Pennsylvania is really the center of the concept of
24 self-reliance and self-representation.

25 It was founded by William Penn in 1682. He wrote the

1 Frame of Government. In the Frame of Government, Article VI,
2 it specifies that all persons of all persuasions are free to
3 appear in all courts within this Commonwealth by themselves and
4 in whatever manner that they feel is appropriate, and if they
5 are unable to proceed, they're actually allowed to be
6 represented by a friend.

7 Now that, in fact, was then incorporated into the
8 Pennsylvania Constitution through a simple article attached to
9 the constitution, and that became the law of the Commonwealth
10 as of February 10th, 1777, and through the present.

11 Built right into the structure of our constitution is
12 a requirement that if, for whatever reason, that provincial law
13 were to become obsolete and need to be done away with, then the
14 legislature simply has to make a specific reference indicating
15 you are not allowed to represent yourself, you are not allowed
16 to represent your property, you are not allowed to represent
17 any of your companies, and certainly you're not allowed to be
18 represented by a friend.

19 If they had done that, then, in fact, we wouldn't be
20 having this discussion. Instead, if they make an illusion to
21 it through some statute -- and, in fact, one of the exhibits I
22 expect to see is an inference that I was engaged in the
23 unauthorized practice of law by defending myself or one of my
24 clients or the accounts that I controlled and managed for my
25 clients -- then, in fact, that mere illusion is not sufficient.

1 You actually have to say that you are stripping the common law
2 or taking away the provincial law.

3 And if that were to happen by inference, and it would
4 become some sort of necessity, we have another section built
5 right into the statutory structure. 1 PA Section 1978 provides
6 that that substantive right, the right to represent yourself,
7 the right to represent your closely held corporation,
8 association, partnership, or joint stock association would be
9 then carried over in the common law of the Commonwealth.

10 So this is all about the common law and protecting
11 our rights. I see myself as a champion of the small business
12 owner and the individual person who is doggedly defending his
13 rights, privileges, and immunities under the Pennsylvania
14 common law. And that's what it is.

15 I went so far in that process, as this process drug
16 on and on and on and on, to where I was forced to take my
17 securities firm that I had established in Pennsylvania,
18 registered in 2006, and had been thwarted in my business
19 because of these exact cases that you'll see, the facts are not
20 in dispute, to where they seized my bank accounts unlawfully
21 from foreign actions, a debt collecting from a manner that I
22 had taken care of in the fourth circuit, and seizing my bank
23 accounts with no lawful authority to do so, all to try to
24 leverage me into, in fact, hiring an attorney or letting an
25 attorney represent me.

1 And in the process, I wound up being forced to shut
2 that law -- that securities firm down, registered investment
3 advisory firm registered here in Pennsylvania, shut it down and
4 converted it into a militia, a well-regulated militia. The
5 militia's corporate charter is as follows: To preserve the
6 common law for all individuals as well as owners as the core of
7 our constitutions, both Pennsylvania and the United States.

8 This reference that was made in some of the jury
9 questions about sovereign citizen or whatever. That's not me.
10 I believe that we have the finest structure in the 50 states.
11 It's a five article constitution. It's different than the
12 United States. But it sets as the first article the
13 declaration of rights. All 29 sections now are, in fact,
14 there, and they are held outside of all government.

15 So these disputes between me and primarily the
16 primary victim in terms of Count 1 are between someone who, for
17 whatever reason, and I hope to find out through this process
18 what it was, was bent on making sure that Keith Dougherty never
19 represented himself, never represented his companies, although
20 Keith Dougherty is an enrolled agent authorized to practice in
21 U.S. tax court and in -- before the Internal Revenue Service in
22 Washington, DC. And I have never lost a case.

23 Now these are financial matters, but we don't have to
24 go into any of that. It's a very simple question, very simple
25 process. Did Keith Dougherty have a constitutional right to

1 represent himself or was it a common law right or was it just
2 something that is governed by statute?

3 Oddly enough, my right to proceed, as I have tried to
4 without success for the past 14 years, is in the Pennsylvania
5 Frame of Government and in the Pennsylvania Constitution. But
6 as of the ratification of the United States Constitution 1789
7 and the First Judiciary Act, it was signed into law by George
8 Washington that all parties in the United States of America are
9 free to appear in all federal courts by themselves or through
10 counsel.

11 Yet in this Circuit, they have decided through a
12 local custom that's been lingering since 1966 that they are
13 going to prevent that. You are not allowed to proceed pro se
14 because they want to make sure of one thing, that is, an
15 orderly marketplace for all attorneys at law.

16 So in the evidence I will be presenting to you, you
17 will find out that during this time the Supreme Court has
18 become so frustrated with this Circuit, reversing it repeatedly
19 on some of these issues, and specifically in the one that was
20 referenced a little bit elaborately by my opponent here, and,
21 frankly, I don't disagree with half of what he said in the
22 beginning of his presentation, the first half.

23 The facts are that in 2015, the Supreme Court
24 reversed this Circuit as it pertains to the transmission of a
25 threat through interstate commerce in that no reasonable person

1 standard can be applied to the case, it must be beyond
2 reasonable person.

3 It also says that it must be -- that negligence is
4 enough. There was a dispute going back and forth whether
5 recklessness could get it done, but, in fact, that has been not
6 resolved yet.

7 The other element that he's completely missing is the
8 fact that there must be proof beyond a reasonable doubt that my
9 subjective intent, the reason I submitted these communications,
10 was to threaten someone, not to point out that I was filing
11 what is a petition for redress and, in fact, it is protected
12 activity under our very same constitution that he's elaborating
13 on, and, in fact, that if, in fact, you are addressing a
14 communication to a government official, especially in this
15 case, the chief executive of the Middle District of
16 Pennsylvania, you are, in fact, talking to the executive about
17 crimes being committed in the courts beneath him.

18 One of the primary functions of the federal court
19 system, whether you realize it or not, is under Article IV,
20 Section 4 of the United States Constitution. They are
21 guaranteed to provide us with a republican form of Government.
22 We cannot have a judiciary taking over the role of legislature
23 or executive and determining that they are going to change all
24 these facts and do things their own way.

25 So all of these facts will show there's one dispute

1 being and one dispute only, that they don't want me to
2 represent myself, and, in fact, they have done it through the
3 commission of crimes.

4 And to my great delight was in 2016, the Supreme
5 Court of the United States actually have said that when it
6 comes to a government official, either withholding his service
7 or his activities, unless you hire his friend or, in fact, pay
8 that friend that otherwise would be lawful, the Supreme Court
9 has now determined that is extortion. They basically have
10 characterized it as the rough equivalent of taking a bribe.

11 So, in fact, you cannot file a petition for redress
12 in this Middle District of Pennsylvania, without paying an
13 attorney at law, that is a bribe that they are forcing you to
14 pay and they are using the word extortion because it's less
15 than robbery. The Hobbs Act is very clear.

16 All of this will be demonstrated by me if not through
17 other extractions and questions or whatever. But there is no
18 dispute that we have had an ongoing battle, but there is a
19 circumstance that you must be aware of. The Supreme Court of
20 the United States has reversed this Circuit on this exact
21 subject because they want to insist a reasonable person is a
22 standard that can be applied to a crime.

23 They have said, no, it cannot be. They've also said
24 it can be mere negligence. It's undisputed that if, in fact,
25 there were an actual true threat, it should be punished, but

1 not in these cases. The reality is, when Keith Dougherty is
2 speaking directly to the Chief Judge of the Middle District of
3 Pennsylvania, he does so by advising him the judges and clerks
4 and magistrates beneath him are, in fact, violating the law,
5 that is the proper procedure.

6 You petition to redress to the Chief Judge. He was
7 never presiding as the adjudicating judge on any of my cases
8 yet he injected himself in each of my cases. And I hope to
9 find out why. Thank you for your attention, and I hope to have
10 a successful what have you.

11 But remember, it was William Penn who basically said
12 because of some times the conflict between law and politics,
13 there had to be a circumstance where the individual would be
14 able to speak directly to his fellow citizens. And he famously
15 did. It's the most famous jury trial in common law history.

16 And I believe this will be in the same vein because
17 as he was charged with offensive speech in London for preaching
18 the Quaker faith, Keith Dougherty has been charged with
19 offensive speech insisting that I will represent myself, I will
20 represent my companies, and I will represent my clients. And
21 there's millions of dollars at stake.

22 But it took me a long long time to come to this
23 moment where for the first time in 14 years I have finally got
24 myself in front of a valid tribunal, and I hope to achieve the
25 proper results with you. Thank you for your time.

1 THE COURT: All right. Thank you. Now we turn to
2 the presentation of the evidence. Mr. Perri.

3 MR. PERRI: Thank you, Your Honor. The United States
4 calls Caleb Enerson to the stand.

5 **CALEB ENERSON, GOVERNMENT'S WITNESS, SWORN**

6 COURTROOM DEPUTY: State your name and spell your
7 name for the record.

8 THE WITNESS: Caleb Enerson. C-A-L-E-B.
9 E-N-E-R-S-O-N.

10 (Water was spilled.)

11 THE COURT: I did the same thing on my tie at lunch.

12 THE WITNESS: I didn't get it on any of the expensive
13 equipment, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MR. PERRI:

16 Q. Okay. Good afternoon.

17 A. Good afternoon.

18 Q. Would you please state your name for the record?

19 A. Sure. Caleb Enerson.

20 Q. And where do you work, Mr. Enerson?

21 A. I work for the Pennsylvania Attorney General's office here
22 in Harrisburg.

23 Q. What is your title or capacity there?

24 A. I'm a Deputy Attorney General for the civil litigation
25 section.

1 Q. Okay. And what do you do as an Assistant Attorney
2 General?

3 A. So my section of the office, we represent Pennsylvania
4 state employees and agencies when they get sued. And we defend
5 state statutes and laws.

6 Q. Okay. Are you based -- is your job based here in
7 Harrisburg?

8 A. Yes, across the street in Strawberry Square actually.

9 Q. Okay. And when you -- do you have to go to court
10 sometimes?

11 A. Yes, I do.

12 Q. So you would be legal counsel for the person that gets
13 sued, right?

14 A. That's correct.

15 Q. All right. Through your employment, are you familiar with
16 a litigant named Keith Thomas Dougherty?

17 A. I am.

18 Q. And do you have some familiarity with his litigation
19 history?

20 A. Yes, I do.

21 Q. And that's through your job, right?

22 A. Yes.

23 Q. But you also have some personal involvement in one of his
24 cases, is that correct?

25 A. Yes. I was representing an individual who Mr. Dougherty

1 sued, and then Mr. Dougherty also sent me various e-mails and
2 things like that.

3 Q. Okay. All right. Could you please just give us a quick
4 briefing on what's the difference between a criminal case and a
5 civil case?

6 A. Sure. So a criminal case is where someone gets charged
7 with a crime and they're criminally prosecuted. They can be,
8 you know, sentenced to probation or jail or things like that.
9 And civil cases are usually disputes about money. And if you
10 end up losing, you have to pay money or sometimes if it's --
11 you might have to start or end a certain action, things like
12 that. Like if it's an employment case, you might have to
13 rehire someone, things like that.

14 Q. Okay. So you would get involved then if someone had filed
15 a lawsuit against a state official, for example?

16 A. Yes.

17 Q. All right. Do you happen to know in terms of the
18 Defendant's litigation history, do you happen to know about how
19 many civil lawsuits he's filed in, say, the last 10 years?

20 A. I believe it's about a dozen or so, give or take. I'm not
21 sure of the exact number, but it's approximately a dozen.

22 Q. Okay. And typically in these cases, is it just naming one
23 Defendant or --

24 A. No. Usually Mr. Dougherty names at least half a dozen to
25 a dozen different individuals in his various lawsuits.

1 Q. And these would be different office holders, people with,
2 you know, state government jobs and titles?

3 A. Yes. There's also been local government officials, I
4 believe, sued local government agencies, federal officials,
5 federal judges, people like that.

6 Q. Okay. And can you give us an idea of, again, based on
7 your familiarity with his litigation history, how long would
8 these cases last? I mean, give us a ballpark idea?

9 A. It depends. Some of them would only be, you know, maybe a
10 few months or a year. Many of them stretched, you know, two,
11 three, four years. And then if you lose a civil case, you can
12 appeal that decision if you lose. And then that can stretch
13 out the process as well. Mr. Dougherty filed appeals in a lot
14 of his cases.

15 Q. So that kind of segues into my next question for you,
16 which was to what extent, if at all, is there any connection
17 maybe between one case and another case? Have you observed
18 that?

19 A. Yes, there is -- there has been a connection. There have
20 been several cases that Mr. Dougherty has brought purporting to
21 be on behalf of various corporations or companies, things like
22 that. And he wasn't allowed to represent those corporations or
23 businesses because he's not a lawyer, and so then he would file
24 a lawsuit. The case would get dismissed.

25 And then when he was unhappy with the result of that

1 lawsuit, along with appealing, he would then often times start
2 a new lawsuit and then name individuals in the new lawsuit who
3 had ruled against him in the first lawsuit. And then that
4 pattern sort of continued with several of his cases.

5 Q. Mr. Enerson, would those individuals be judges?

6 A. Some of them were, yes. There were quite a few judges
7 that he ended up suing because they would rule against him, and
8 then they would be named in subsequent lawsuits he would file.

9 Q. So are you saying that he receives an unfavorable ruling,
10 and then goes after the judge that made the ruling?

11 A. Yes, that happened several times from what I can tell from
12 the dockets on his cases.

13 Q. Okay. You've just used a word that us lawyers are
14 familiar with. What's a docket and what's a docket entry?

15 A. Okay. So the docket is just basically a recording of all
16 the filings that are done in a case. So you start a civil case
17 by filing a complaint or a lawsuit. And then there will be,
18 you know, various motions might get filed, other things in
19 connection with the case.

20 And every time something gets filed with the court, then
21 it becomes a new docket entry. And, for example, in the
22 federal courts, every time something is filed, then it's
23 assigned a docket number for that particular case.

24 THE COURT: Before you go on, Mr. Dougherty, are you
25 able to see the witness?

1 MR. DOUGHERTY: I am able to see him well enough,
2 yes.

3 THE COURT: Okay. Go ahead. Sorry, Mr. Perri.

4 MR. PERRI: I can move it over.

5 THE COURT: That's fine. It just occurred to me.
6 I'm having a tough time myself. Go ahead.

7 BY MR. PERRI:

8 Q. So with respect to Mr. Dougherty's cases, do you have a
9 sense of whether or not there would be a few number of docket
10 entries or a large number or something in between?

11 A. For a lot of his cases, there were a lot of docket
12 entries. There would often be hundreds of things that would
13 get filed in connection with his cases. And most of the
14 filings were filings from Mr. Dougherty, not necessarily the
15 parties that he was suing.

16 Q. Okay. And he would be -- when someone files a lawsuit,
17 what do we call them?

18 A. Normally they're the Plaintiff.

19 Q. And the person that you are trying to get something from
20 or, you know, challenging in some way, what do we call them?

21 A. They would be the Defendant or departments if there's more
22 than one.

23 Q. Okay. All right. So you said you actually had some
24 personal involvement through your job with Mr. Dougherty, is
25 that correct?

1 A. Yes, that's correct.

2 Q. Which case was that?

3 A. So Mr. Dougherty filed a suit against about 10 different
4 individuals. I only represented one of them, his name was
5 Jared Dupes. And he was at the time an employee with the
6 Pennsylvania Department of Revenue.

7 Q. Can you spell his last name and first name as well for the
8 benefit of the court reporter?

9 A. Sure. Jared, J-A-R-E-D, Dupes, D-U-P-E-S.

10 Q. And was that case number 1:17-CV-01541?

11 A. That sounds correct, yes.

12 Q. How long did that case last, Mr. Enerson?

13 A. I want to say two or three years total counting the appeal
14 that Mr. Dougherty filed as a result of that.

15 Q. Okay. And so he was the Plaintiff?

16 A. Yes. Mr. Dougherty filed the lawsuit.

17 Q. And Mr. Dupes was one of the departments?

18 A. Yes, that's correct.

19 Q. Were there other departments?

20 A. Yes. I don't remember the exact number since I did not
21 represent everyone in that case. I believe there were about
22 ten or so in total.

23 Q. Okay.

24 MR. PERRI: Your Honor, may I approach the witness?

25 THE COURT: Yes.

1 BY MR. PERRI:

2 Q. I'd like to show you what's been marked as United States
3 Exhibit No. 5-A. Could you please take a look at it and flip
4 through its pages and tell me if you recognize it?

5 A. Yes, this appears to be a copy of the docket for the case
6 that you just mentioned, 17-CV-01541 case.

7 Q. Does it show who the Plaintiff is and the Defendant and
8 stuff like that?

9 A. It does, yes.

10 Q. And is that -- does that appear to be a certified copy
11 from the Clerk's office?

12 A. Yes, it does have a stamp or an imprint saying it's
13 certified by the record, and then it has a date and signature.

14 Q. And you're familiar with this type of document? You can
15 get these from the Clerk's office for a particular case,
16 correct?

17 A. Yes.

18 Q. All right. And that is the docket listing for your case
19 that you were involved in?

20 A. Yes, it appears to be.

21 MR. PERRI: Your Honor, we'd move for the admission
22 of this exhibit.

23 MR. DOUGHERTY: No objection.

24 THE COURT: All right. It's admitted.

25 MR. PERRI: Okay.

1 BY MR. PERRI:

2 Q. Mr. Enerson, the exhibit having been admitted, I would
3 like to ask you who the other departments are in that case?

4 A. Sure. There was, along with Mr. Dupes, Dupes, there was
5 Commonwealth Court Clerk, which I believe would be referring to
6 the Commonwealth Court of Pennsylvania, which is one of
7 Pennsylvania's state appeals courts.

8 Q. What does the clerk do, Mr. Enerson?

9 A. The clerk is responsible for keeping track of the dockets
10 and for entering the judge's orders, things like that.

11 Q. So it's an administrative function?

12 A. Yes.

13 Q. Okay.

14 A. There's also listed Christopher Conner, who is a judge
15 here in the Middle District of Pennsylvania. Then one is
16 listed as all one, but it's five names, Caldwell, Jones,
17 Carlson, Blewitt, and Welsh.

18 Q. Who are those people, Mr. Enerson?

19 A. The first four are all current or former judges here in
20 the Middle District. Welsh, I believe, refers to Peter Welsh,
21 who is the -- who was at the time the Acting Clerk, I believe
22 he is now the permanent Clerk of Courts for the Middle
23 District.

24 Q. Middle District of Pennsylvania?

25 A. That's correct.

1 Q. That's this federal court?

2 A. Yes, that's correct.

3 Q. Okay.

4 A. And then there are two -- there's three other departments,
5 there's the Pennsylvania Unified Judiciary, which is sort of
6 the administrative office for the Pennsylvania courts, Jerome
7 Simandle, S-I-M-A-N-D-L-E, I believe he is a federal judge in
8 the Eastern District of Pennsylvania or in Maryland, I'm not
9 positive, and then a David Ragonese, R-A-G-O-N-E-S-E, and I'm
10 not sure who that is.

11 Q. Okay. To what extent, if at all, is this typical of the
12 nature of the departments that gets sued in Mr. Dougherty's
13 lawsuits?

14 A. I would say it seems fairly typical of the cases that Mr.
15 Dougherty has filed. As I mentioned, there were several judges
16 that he sued, as well as court clerks, which are another sort
17 of common defendant for a lot of these cases. And then Mr.
18 Dupes, who I represented, works for the Department of Revenue
19 here in Pennsylvania.

20 Q. What is Mr. Dupes' job?

21 A. So Mr. Dupes works for the Bureau of Compliance within the
22 Department of Revenue. It's basically the Pennsylvania version
23 of the IRS. And I believe at the time he was involved with
24 something regarding corporate structure or business taxes,
25 something like that.

1 Q. Okay. What was it that the Defendant wanted in your case?
2 You know what I mean? Like every time somebody files a civil
3 lawsuit, it's because the Plaintiff wants something. What did
4 he want?

5 A. Well, I believe Mr. Dougherty was seeking money damages
6 from the defendants. I believe it was like 20 million dollars
7 or some very large amount. He also was suing the various state
8 officials because he believed that they had not acted properly
9 in prior cases, so I believe he may have been trying to undo
10 prior court rulings.

11 And as best as I can remember, as far as Mr. Dupes was
12 concerned, as I had mentioned earlier, in Pennsylvania, if
13 you're a corporation or a business, it's essentially a person
14 even though it's not a living, breathing person, so they need
15 an attorney to represent them in court.

16 They can't be represented by a non-lawyer. Mr. Dougherty,
17 to the best of my knowledge, is not a licensed attorney
18 anywhere. And I believe he would have had some dispute with my
19 client, Mr. Dupes, regarding his ability to represent the
20 interests of a corporation in court.

21 Q. Okay. Okay. So that's the connection?

22 A. Yes.

23 Q. Okay. Who was the presiding judge in that case that
24 you're talking about there?

25 A. It was Judge Conti, C-O-N-T-I.

1 Q. That is Joy Flowers Conti?

2 A. Yes, that's correct.

3 Q. Is she a federal judge in the Middle District of
4 Pennsylvania?

5 A. No, she's a judge in the Western District of Pennsylvania,
6 which is based out of Pittsburgh.

7 Q. So she was the judge in that case, in your case; correct?

8 A. Yes, that's correct.

9 Q. So why was she a judge on a case in this district if she
10 wasn't a judge in this district?

11 A. They had to bring in Judge Conti from outside of the
12 district because I believe between this case and some of Mr.
13 Dougherty's other cases, he had sued all of the judges that sat
14 in the Middle District of Pennsylvania.

15 At that time, there were about 10 judges, either active or
16 in semi-retired status. I believe he had sued all of them at
17 one point or another in his various cases, so they had to bring
18 in a different judge to hear the case.

19 MR. DOUGHERTY: Objection.

20 THE COURT: Hold on.

21 MR. DOUGHERTY: Misleading.

22 THE COURT: That's not an -- there's no rule about
23 misleading.

24 MR. DOUGHERTY: Facts not in evidence.

25 THE COURT: Well, he's giving his testimony, but you

1 can cross-examine him on that. All right.

2 BY MR. PERRI:

3 Q. So when you say they had to bring her in, like what are
4 you referring to? Can you explain that just a little bit more?

5 A. Yes. So there will be times such as this case where a
6 judge who's not based in that particular district will have to
7 be assigned to a case. At the time, Judge Conner, who is one
8 of the named defendants in this case, was the Chief Judge for
9 the Middle District of Pennsylvania, which they're in charge of
10 administrative matters for that particular district.

11 So the way I understand the process is that Judge Conner
12 would have requested a judge from outside the district to come
13 and preside over this case because of the issues with having a
14 Middle District of Pennsylvania judge preside over Mr.
15 Dougherty's case.

16 Q. Like what issues? I mean, what is the issue there?

17 A. Well, so basically they want to avoid the appearance of
18 any sort of conflict of interest. And since many of the judges
19 had been named in the lawsuit, if not all, and the fact that it
20 would be their direct colleagues that had been named in this
21 and other lawsuits, in order to avoid the appearance of
22 anything underhanded or anything like that, then they would
23 bring in a judge who hadn't been involved with Mr. Dougherty or
24 with any of his prior cases.

25 Q. Okay. So did Judge Conti rule in the Defendant's favor in

1 that case?

2 A. In Mr. Dougherty's favor? No, she did not.

3 Q. In fact, there were a number of decisions that she issued;
4 correct?

5 A. Yes, and I believe they were all pretty much unfavorable
6 to Mr. Dougherty.

7 MR. PERRI: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MR. PERRI:

10 Q. Mr. Enerson, I'd like to show you what's been marked for
11 identification purposes as United States Exhibit 5-B, 5-C, 5-D,
12 and 5-E. Please take a look at those, each one of them. And
13 then I'm going to ask you if you recognize them.

14 A. Yes, I do recognize these.

15 Q. Do you recognize those as decisions issued by Judge Conti
16 in the case that you worked on?

17 A. Yes. There's -- it looks like four different decisions
18 that she issued in that case.

19 Q. And were all four of those unfavorable to the Defendant?

20 A. They were, yes.

21 Q. And so when the judge, you know, reaches the point where
22 they want to make an official pronouncement of the outcome of
23 the case or the issue, we call that a decision; correct?

24 A. Yes. And then that will be written down as an opinion or
25 a memorandum opinion, an order.

1 Q. That's how it will be titled?

2 A. Yes, that's correct.

3 Q. On each of those, do you see an indication of whether or
4 not that is an official copy from the Clerk's office?

5 A. Yes, they all have Mr. Welsh's stamp. They're all dated
6 and certified.

7 Q. Whose stamp, by the way?

8 A. That's Peter Welsh, the Clerk.

9 Q. Okay. The one you mentioned earlier?

10 A. Yes, who was named as one of the defendants in this
11 lawsuit.

12 Q. Okay. All right.

13 MR. PERRI: And at this point, Your Honor, I would
14 move for the admission of those four exhibits.

15 MR. DOUGHERTY: No objection.

16 THE COURT: All right. They're admitted.

17 BY MR. PERRI:

18 Q. And let's talk about 5-B for a second, Mr. Enerson, if you
19 wouldn't mind?

20 A. Sure.

21 Q. So --

22 MR. PERRI: Your Honor, I would ask that we have
23 permission to publish?

24 THE COURT: Sure. So my rule is once it's admitted
25 into evidence, Mr. Dougherty, if a document is in evidence,

1 both you and the Government can publish it, put it in front of
2 the jury.

3 MR. PERRI: Okay. Thank you, Your Honor.

4 THE COURT: You don't need to ask.

5 MR. PERRI: That was my next question.

6 THE COURT: Yep.

7 MR. PERRI: Okay.

8 BY MR. PERRI:

9 Q. All right. Can you see the first page of that, please?
10 Thank you. And just so that people have an understanding of
11 what these documents look like, could you point out where the
12 parties are?

13 A. Yes. So --

14 Q. Actually, you can draw on your screen with your finger.
15 It's pretty cool.

16 A. Okay. So right here where I've circled, that's Mr.
17 Dougherty. And it says, Keith Dougherty, et al, Plaintiffs.
18 There were, I believe, four or five individuals who originally
19 were -- had filed the lawsuit. But ultimately, it just became
20 Mr. Dougherty because since he's not a lawyer he could not
21 represent the other individuals. And I don't believe they
22 filed anything in connection with the case.

23 And then below that where it says, Jared Dupes, et al,
24 Defendants. That's, again, Mr. Dupes was one of the 12
25 defendants, 12 or 10 defendants that were named in the case.

1 But to save space, they just write the name of the first
2 individual.

3 Q. Does it show the case number on there?

4 A. Yes. First of all, it's right here where it says that
5 appears on the top of every document that gets filed, so you
6 know what case it's associated with. Then it also appears
7 right there.

8 Q. Okay. All right. And I believe if you touch on the
9 little pencil icon, and then up in the corner where the arrow
10 is, and then you can hit clear to get rid of those annotations.
11 And that document also shows who the judge was, right?

12 A. Yes. So it says right here Conti, so Judge Conti. And
13 then also on top of it where it says JFC and then again next to
14 the docket number right here, that's Judge Conti's initials,
15 Joy Flowers Conti.

16 Q. Okay. So if we could go to the next page? I have a
17 question for you, Mr. Enerson. What kind of litigant was the
18 Defendant, Mr. Dougherty?

19 A. A very, I guess, busy would be a good way of putting it.
20 I believe this case had approximately between 150 and 200
21 docket entries, which is a fairly high amount, especially
22 considering how the case was ultimately terminated by the
23 judge.

24 Procedurally, it was very early in the case, but Mr.
25 Dougherty, I believe, at one point was filing, you know,

1 something two or three times a week on the case even when there
2 was nothing pending. And a lot of these filings would be, you
3 know, 25, 50, a hundred pages at a time. So very, very
4 frequent and very verbose.

5 Q. And was it you -- you have to read these things, right,
6 because you're defending Mr. Dupes, right?

7 A. Yes.

8 Q. And you have to respond to them, right?

9 A. Yes.

10 Q. So you would have to file a pleading in response to
11 anything that he files pretty much?

12 A. Yes. Eventually, I mean, there were just so many things
13 that Mr. Dougherty had filed that you really couldn't file a
14 response to everything that he had filed because there were
15 just so many different things. And the judge, for example,
16 would tell him to file a response to something and he wouldn't.
17 And he would instead just file 5 or 10 or 15 different things
18 unrelated to that. But, yes, in normally if something gets
19 filed by one party, usually the other side will file a
20 response.

21 Q. Okay. I'd like to direct your attention to the first full
22 paragraph on that page, page 2.

23 A. Yes.

24 Q. Could you read that, please?

25 A. Sure.

1 As best the Court can glean from the 140-page complaint,
2 Dougherty is contesting, at least in part, and apparently yet
3 again, various prior actions, decisions, and rulings by
4 individuals, governmental entities, judges, and courts stemming
5 from his attempted representation in various courts of Docson
6 Consulting, LLC, of which he is the sole member, and which was
7 not permitted because Dougherty is not a licensed attorney.
8 Dougherty also seeks a jury award against the defendants in
9 excess of 200 million dollars.

10 And then there's a notation, which is a citation to Mr.
11 Dougherty's complaint.

12 Q. Okay. Can we move to the next page, please? Mr. Enerson,
13 if you would take just a second to refamiliarize yourself with
14 that page?

15 A. Yes.

16 Q. And also with the top of the next page, if we could see
17 that?

18 A. Okay, yes.

19 Q. Okay. Is it fair to say that the judge at that point is
20 talking about a whole bunch of motions and other filings the
21 Defendant has made with respect to something called default
22 judgment?

23 A. Yes. There were a lot of references to that in Mr.
24 Dougherty's filings with the court.

25 Q. In fact, on page 3, she attempts to list out at least some

1 of them?

2 A. Yes.

3 Q. And then again at the top of the next page, she lists some
4 by ECF number?

5 A. That's correct.

6 Q. What is a default judgment?

7 A. So a default judgment is if an individual files a lawsuit
8 and it's -- and the person that they're suing is given proper
9 notice of the lawsuit, and certain rules are followed, if that
10 person never responds to the lawsuit, never attempts to defend
11 it, then a default judgment can be entered, and the party that
12 filed the lawsuit can win without having to, you know, take the
13 case to trial or anything like that. They win by default.

14 Q. Okay. So what is the judge doing there with respect to
15 all these things that have been filed about default judgments?

16 A. So basically Mr. Dougherty was attempting to obtain a
17 default judgment in this case, and perhaps in some of his other
18 cases as well, because he did not believe that the parties he
19 had sued had properly responded to his lawsuit. And as the
20 judge discusses further on in that opinion, the judge ends up
21 denying all of those requests by Mr. Dougherty to enter a
22 default against the parties Mr. Dougherty had sued.

23 Q. To what extent was this decision about something called
24 service of process?

25 A. That was a main problem with Mr. Dougherty's case, and the

1 judge goes on to discuss it. Basically one of the reasons why
2 a default judgment couldn't be entered in this case against the
3 people Mr. Dougherty had sued is because he hadn't -- he had
4 not completed proper service of process in this case.

5 Q. What is service of process?

6 A. So service of process is the legal way in which a lawsuit
7 is given to the party, the defendants, the individuals being
8 sued. There's very specific rules in place as to how you can
9 inform a party that you're suing them and give them notice of
10 the lawsuit so they can defend themselves.

11 Q. Okay. All right. And without going through this whole
12 decision and talking about, you know, getting too far into the
13 weeds, can we skip over to 28, please, where the judge kind of
14 sums up? And this is Judge Conti speaking, right?

15 A. Yes, this is her decision.

16 Q. So could you please read the paragraph right after the
17 heading, starts with for, all the way down to the word process?

18 A. For the reasons indicated, Dougherty did not make proper
19 service of original process upon any of the defendants, none
20 are in default, and accordingly, entry of default or default
21 judgment is inappropriate. Due to the lack of service of
22 original process upon any of the defendants, all the previously
23 filed motions by Dougherty for default and default judgment,
24 and then it lists all his motions by docket number, and all of
25 the previously filed motions including therein a request for

1 default and default judgment, again a list of Mr. Dougherty's
2 filings, as it related to that, will be denied. Default cannot
3 be entered where there was insufficient service of process.

4 And then there's a citation, it indicates that's a
5 quotation from a prior court decision.

6 Q. Okay, thank you very much. All right. Now I'd like to
7 ask you some questions about United States Exhibit 5-C.

8 A. Sure. Certainly.

9 Q. All right. Could we see the first page, please? And this
10 is familiar because it's -- it looks like a lot like what we
11 saw with the other exhibit, correct?

12 A. Yes, it's just a different decision by Judge Conti, but
13 for the same case.

14 Q. Authored by Judge Conti, right?

15 A. Yes, that's correct.

16 Q. So these are her words?

17 A. That's correct.

18 Q. All right. I'd like to direct your attention to the top
19 of page 3, starting with the first full sentence where the
20 judge is kind of explaining what's happened in some previous
21 orders; correct?

22 A. Yes.

23 Q. Could you read that sentence, please?

24 A. The one that starts, in that order?

25 Q. Yes.

1 A. In that order, the Court further explained that Dougherty
2 was not an attorney licensed to represent other individuals.
3 Yet the numerous filings by him contain the electronic
4 signature of Brent Frey, Erica Frey, and R. Michael Best, who
5 were individuals purported to be co-plaintiffs and are not
6 registered as CM/ECF registrants in the United States District
7 Court for the Middle District of Pennsylvania and had not
8 signed the complaint as required by Federal Rule of Civil
9 Procedure 11(a). The Court observed that Dougherty was well
10 aware that he cannot proceed on behalf of other plaintiffs and
11 explicitly indicated that the other purported co-plaintiffs in
12 this action must appear through counsel or appear for
13 themselves.

14 And then there's some citations to other court cases.

15 Q. Thank you. May we skip over, please, to page 5 under the
16 heading analysis? And can we expand that whole big paragraph
17 there?

18 A. Dougherty's motion for reconsideration and brief do not
19 present any discernable, much less valid, argument for
20 reconsideration of the Court's March 2nd, 2018, orders, and
21 therefore the motion will be denied. Much of the filings with
22 respect to these motions is undecipherable, rambling,
23 unintelligible, and quite simply presented in a near impossible
24 to understand stream of consciousness style.

25 Then there's a citation to some of Mr. Dougherty's prior

1 court cases.

2 To the extent Dougherty seeks to challenge rulings made
3 with respect to the rights or interests of others, namely, the
4 persons delineated as co-plaintiffs by him, he lacks standing
5 to assert their interests and claims.

6 Again, a citation to one of Mr. Dougherty's prior cases.

7 Q. Thank you. And this is Judge Conti saying this, right,
8 her words?

9 A. That's correct.

10 Q. Can we skip over to page 7? And right here, we have a
11 reference to what Mr. Dougherty has been like as a litigant.
12 Could you --

13 A. Um-hum. Dougherty is keenly aware of how to achieve
14 electronic filing through the CM/ECF system for which he is a
15 registrant, as fully evidenced by his voluminous filings on the
16 docket that comprise over 123 entries and thousands of pages.
17 Thus, the ESIGN Act would provide no conceivable support for
18 the Court's reconsideration of its order.

19 Q. Thank you. Could we now proceed to 5-D? Again, is this
20 set up, the caption of this case is what we call it, right, is
21 it set up the same as the others?

22 A. Yes, this is for this case that we've been discussing.
23 And it's another decision by Judge Conti.

24 Q. Okay. So under the heading background, on page 2, at the
25 end of that large paragraph, is there a reference to what the

1 Defendant was alleging in this -- as it pertains to this
2 particular decision at least?

3 A. Yes, there is.

4 Q. What is that?

5 A. So it indicates Judge Conti writes, In what appears to be
6 an allegation of conspiracy against the Commonwealth
7 defendants, the Plaintiff writes, the way "to success they say"
8 is to say "you Keith Dougherty are not permitted to ask, your,
9 questions" and obtain a "decision on the merits" as to "the
10 definition of person" under 28 U.S.C. 1654 and "as applied" and
11 under "strict scrutiny" as "required in FEC versus WRTL (2007),
12 the precursor to Citizens United circumventing the mootness
13 doctrine."

14 Paragraph 30, This then allows the "Commonwealth Agencies"
15 to deny "procedural due process" by saying "there is no
16 declaratory judgment and/or other relief available for Keith
17 Dougherty and all those associated with him."

18 Q. Okay. Now whose words are those?

19 A. So that is Judge Conti quoting part of Mr. Dougherty's
20 lawsuit.

21 Q. To what extent is that typical of that rather unusual use
22 of quotation marks?

23 A. That appears in, as I recall, quite a lot of Mr.
24 Dougherty's filings. He would -- there would be a very liberal
25 use of quotation marks. And he would copy and paste a lot of

1 different things into one document. So as you can see, it sort
2 of made it difficult to read.

3 Q. Okay. Could we skip over to page 3, please? Could we
4 start down toward the bottom of that page? Would you read
5 that, please, starting with the word Dougherty. And then we're
6 going to continue onto the next page to the end of that first
7 full partial paragraph there?

8 A. Okay.

9 Dougherty is also seeking damages against the defendants
10 stating "it will now cost 200 million dollars to settle but you
11 can go back to your corruption undaunted until the end."

12 Then there's a citation to Mr. Dougherty's lawsuit.

13 By way of background, Dougherty is a litigious plaintiff
14 who has filed multiple unsuccessful actions on behalf of
15 himself, Docson Consulting, and other individuals in
16 Pennsylvania state court and multiple United States District
17 Courts. The Court of Appeals for the Third Circuit has
18 described Plaintiff as a "frequent and frequently vexatious
19 litigator."

20 There's a citation to some of his cases.

21 Q. What does vexatious mean?

22 A. I guess the best way to put it would be very confusing and
23 rambling. As previously noted, Mr. Dougherty sort of would
24 just throw everything against the wall, and there would be, you
25 know, hundreds of pages he would file at a time. So it was

1 very confusing to figure out what it was sometimes he was
2 saying.

3 Q. All right. Continue reading through that paragraph?

4 A. The Court of Appeals for the Third Circuit also stated
5 with respect to another one of Plaintiff's complaints, as with
6 many of Dougherty's filings, the complaint is largely
7 unintelligible.

8 A citation to one of his prior lawsuits.

9 District courts have characterized Dougherty's
10 communications with those courts as unintelligible and
11 rambling, fraught with snide asides and personal attacks.

12 Another citation to one of his previous lawsuits.

13 For example, the United States District Court for the
14 District of New Jersey observed that it is not easy to decipher
15 Plaintiff's blend of arguments, insults, and diatribe.
16 Dougherty's complaint and filings in this action are no
17 different.

18 Q. Okay. Does the word vexatious appear several times in
19 this decision?

20 A. Yes.

21 Q. And then finally, I'd like to direct your attention to
22 United States Exhibit 5-E. And does that appear to be the same
23 as the others at the top there?

24 A. Yes, it's from the same case. It's another decision from
25 Judge Conti in this case.

1 Q. And so these are her words again?

2 A. Yes, that's correct.

3 Q. All right. Could we direct your attention, please, to the
4 first line under the heading Factual History -- the first
5 sentence rather?

6 A. Dougherty's filings in this matter contain thousands of
7 pages and have, as previously indicated by the Court, averaged
8 approximately three filings per week.

9 Citation to a prior opinion by Judge Conti.

10 His recent barrage of filings -- and then the citation to
11 Mr. Dougherty's 20 plus filings -- continues this course of
12 action.

13 Q. Then can we skip to the end under the Analysis heading on
14 page 4? Please read the line that starts with, much of the?

15 A. I'm sorry, I didn't hear that.

16 Q. Page 4?

17 A. Yes. Much of the filings with respect to these motions is
18 undecipherable, disjointed, rambling, unintelligible, quite
19 simply presented in a near impossible to understand stream of
20 consciousness style.

21 Q. Okay. Can we expand that for just a second? And I think
22 that sentence continues to the next page. All right. Thank
23 you.

24 Now I want to ask you some questions about something you
25 mentioned earlier. This case that we've been talking about

1 with all the decisions from Judge Conti, that wasn't the extent
2 of your personal involvement with this Defendant; correct?

3 A. Correct. He also sent me some e-mails.

4 Q. Personally?

5 A. Yes.

6 Q. And did you, in fact, receive one of the e-mails that
7 forms the basis for Count 4 of the indictment?

8 A. I did, yes.

9 MR. PERRI: May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MR. PERRI:

12 Q. I'd like to show you what's been marked for identification
13 purposes as United States Exhibit 4-A. Tell me if you
14 recognize that, sir?

15 A. Yes. This is an e-mail from Mr. Dougherty to myself and
16 several other individuals from January of last year.

17 Q. And did you, in fact, personally receive that?

18 A. Yes. My e-mail address is listed as one of the recipients
19 there, cenerson@attorneygeneral.gov.

20 Q. Do you remember having received it?

21 A. I do, yes.

22 Q. Does that appear to be a fair, accurate, and correct copy
23 of the e-mail that you received?

24 A. Yes.

25 MR. PERRI: Your Honor, we move for the admission of

1 this exhibit, 4-A.

2 MR. DOUGHERTY: No objection.

3 THE COURT: It's admitted.

4 BY MR. PERRI:

5 Q. I want to ask you some questions about this. Can we put
6 that up, please? All right. Could you show us the header
7 information there and just point out who's sending this and
8 who's receiving it?

9 A. Yes. So from -- it was sent from Mr. Dougherty.

10 Q. Could you expand that?

11 A. And then there were several recipients, including myself.
12 That's my e-mail address right there. And then he carbon
13 copied it to various other individuals as well. And at least
14 one of them I know, I believe that was another one of Mr.
15 Dougherty's e-mail addresses.

16 And then I recognize a couple of the other -- the
17 bestautosales1@gmail.com, I believe that was one of the other
18 individuals that he had attempted to bring a lawsuit on behalf
19 of. And he was ultimately not allowed to do that. But I do
20 recognize that e-mail address as well.

21 Q. Okay. Does he mention a variety of judges in this
22 particular communication?

23 A. Yes, he does.

24 Q. And does the communication itself relate to his lawsuits
25 in any way or is there any connection either direct or

1 indirect?

2 A. Yes. I believe at some point, he did mention -- he was --
3 I believe he mentioned Judge Conti in the decision. And as you
4 can see, it's sort of, you know, there's a lot of different
5 fonts and font sizes and range of punctuation and things like
6 that. But the gist of this, I believe, was basically that, you
7 know, prior rulings that had been made against Mr. Dougherty
8 were invalid for various reasons or another.

9 Q. Okay. Could I direct your attention to the top of the
10 second page, please?

11 A. Yes.

12 Q. All right. And I was wondering if you could read that
13 portion there at the top?

14 A. Sure. The crux of the matter is Keith Dougherty avers he
15 could shoot Judge Conti in the head and claim necessity under
16 Pennsylvania's Discretionary Deadly Force Doctrine. Thomas
17 Young was offended by the mere suggestion, and Dr. Berger was
18 completely unfamiliar with the *Addington versus Texas* standard.
19 See Dropbox recording previously provided. Again, Judge
20 Connolly goes along as if he has never received anything from
21 Keith Dougherty, defining all submissions as gibberish. Once
22 again, even if Judge Connolly is correct in that all that it
23 takes is a rational basis to ignore all sixth amendment
24 protections, the Supreme Court has said the moment Keith
25 Dougherty asserted Rule 12.3 and the AUSA from West Virginia

1 defaulted, the indictment must be quashed, even if Keith
2 Dougherty was just like Mullenix, ignoring all other options,
3 and just shot Judge Conti under his Docson's militia authority.

4 Q. Mr. Enerson, when you read that language, did you have any
5 concerns?

6 A. Yes, I did. Obviously any reference to, you know,
7 shooting a judge is concerning. And certainly Mr. Dougherty
8 had filed some things that I had interpreted that he was pretty
9 angry with the courts' rulings and things like that. But
10 certainly threats of violence are more serious.

11 Q. Okay. Are you aware of whether or not he used some
12 worrisome language regarding Judge Conti in another of the
13 communications in this particular case?

14 A. Yes. Yes, I believe there were other violent
15 communications.

16 Q. Are you aware of whether or not there was a communication
17 in which the Defendant said to the effect that it may be
18 necessary for him to do this to shut Judge Conti up?

19 A. Yes. I believe there was a reference to Ruby Ridge and
20 that he would need, you know, a sniper, I believe, or someone
21 would have to shoot Judge Conti to shut her up.

22 Q. But you didn't personally receive that particular e-mail?

23 A. I don't remember if I did. Again, there were a lot of
24 e-mails and a lot of communications from Mr. Dougherty.

25 Q. Let me show you for identification purposes United States

1 Exhibit 2-A.

2 A. Yes, this appears to be an e-mail from Mr. Dougherty. But
3 I'm not listed as one of the recipients.

4 Q. Okay. Thank you. Through your employment, Mr. Enerson,
5 have you had an opportunity to read quite a few of Mr.
6 Dougherty's filings?

7 A. Yes.

8 Q. Have you ever noticed whether or not there are certain
9 themes or claims or arguments that tend to come up again and
10 again and again and again and again and again?

11 A. Yes, there's the -- since default was a big part of this
12 case, that comes up a lot where he thinks he should have won by
13 default, the Clerk's office didn't enter default against these
14 people that I sued, they are corrupt, corruption of judges and
15 state officials.

16 Federal officials is another common theme, that the
17 government is conspiring against Mr. Dougherty and, you know,
18 trying to thwart him at every way. The fact that he should be
19 allowed to represent businesses or corporations even though
20 he's not a lawyer, that comes up quite a bit as well. There
21 were a lot of references to Docson Consulting, which my
22 understanding is that that's a corporation or a business entity
23 formed by Mr. Dougherty and he would attempt to represent that
24 corporation in court.

25 But since he's not a licensed attorney, he was not allowed

1 to do so. So a lot of his lawsuits had to do about him trying
2 to fight the rules about whether or not he could represent
3 businesses in court.

4 Q. Okay. So those are common themes that you see a lot?

5 A. Yes.

6 Q. In your review of his writings, do you ever get -- and I'm
7 asking for your impression -- do you ever get a sense of
8 frustration or anger in the way that he is expressing himself?

9 A. Yes. I know as the case progressed -- I know at the
10 beginning, it was, you know, as you saw, there were some -- it
11 was very confusing, some of the things that Mr. Dougherty would
12 write. But overall, there wasn't anything particularly
13 concerning.

14 But as the case went on, certainly things got -- it was
15 near the end then when, for example, I got the e-mail
16 mentioning shooting Judge Conti. I know there was another
17 filing or e-mail Mr. Dougherty had written where he had made a
18 reference to, well, I need to resort to the common law to win
19 my disputes. And he included a picture of a medieval knight
20 attacking another medieval knight with an ax.

21 Q. So let me ask you a question. This idea of resorting to
22 the common law and the idea of being justified, is that also a
23 theme that you've ever noticed?

24 A. Yes. There were definitely -- again, since a lot of Mr.
25 Dougherty's arguments were that, you know, the judicial system

1 or the judges were corrupt or weren't doing the things that
2 they were supposed to, he would make reference to common law,
3 which is basically the laws that existed before we had the
4 modern sort of laws that we have in this country, you know,
5 dating back to the middle ages.

6 There would be references to, you know, militias and
7 other, you know, pre-revolutionary war sort of things and
8 earlier than that. So definitely this idea that the government
9 was not acting appropriately and, therefore, you know, methods
10 outside of traditional governmental channels would have to be
11 used, that definitely comes up a lot.

12 Q. Mr. Enerson, to your knowledge, has the Defendant
13 prevailed, won, in any of these cases?

14 A. No, I don't believe he has.

15 MR. PERRI: No further questions, Your Honor.

16 THE COURT: All right. Thank you. Keep going.
17 We're going to start cross. Does anybody need a restroom break
18 or anything like that? You're all good? All right. Mr.
19 Dougherty, cross examination.

20 **CROSS EXAMINATION**

21 BY MR. DOUGHERTY:

22 Q. Mr. Enerson, you have spent the time here giving the jury
23 an impression that you were a respondent in the matter of *Keith*
24 *Dougherty versus Jared Dupes*, et al?

25 A. I was representing Mr. Dupes, who you had sued, but I

1 wasn't named as a party in the case.

2 Q. Okay. And could you give the jury some guidance as to
3 what the preliminary filing jurisdiction was?

4 A. If I understand your question correctly, when you filed
5 your initial lawsuit, part of the -- one of the issues that was
6 raised in court was whether or not you had properly served my
7 client and some of the other --

8 Q. Mr. Enerson, let me correct my question, the poor quality
9 of it. In all federal lawsuits, you must fill out a civil
10 cover sheet and identify for the clerk what is the primary
11 action you are moving under, the jurisdiction of the federal
12 court because federal courts are limited jurisdiction.

13 They do not have the kind of plenary powers or police
14 powers that exist in state courts, so you actually have to
15 identify for the clerk what it is you are proceeding under.
16 Can you tell the jury what that statute was?

17 THE COURT: All right. So I'm going to allow this,
18 but it's got to be a question. We can't -- right, so --

19 BY MR. DOUGHERTY:

20 Q. What is the statute?

21 THE COURT: What is the statute, all right.

22 THE WITNESS: I'm not sure if I remember offhand
23 which statute it was. I believe, Mr. Dougherty, you had raised
24 various constitutional claims which would be brought under,
25 it's called -- it's a Section 1983 claim is usually how they're

1 referred to when you are filing a suit against a state
2 official.

3 BY MR. DOUGHERTY:

4 Q. Let me help you. The original filing was 28 U.S.C. 2201.
5 It was a declaratory -- it's actually a declaratory judgment
6 action all by itself, and it was designed to find out a ruling
7 from the Court what the definition of corporation is in the
8 Commonwealth of Pennsylvania?

9 A. Again, I don't recall exactly if that is the box that you
10 checked on the civil cover sheet, but I believe that would be
11 indicated on the cover sheet to the complaint. You would check
12 what specific statute or legislation or whatever you were
13 challenging.

14 Q. So that is an actual essential element of any lawsuit.
15 Otherwise, the clerk won't issue the summons?

16 A. I believe you do have to fill out the cover sheet or else
17 they won't accept the lawsuit, that's correct.

18 Q. Again, I'm a little bit clumsy in my question. You can
19 get the clerk to do it, but I'm saying, if you don't identify
20 federal jurisdiction, there never will be a summons issued?

21 MR. PERRI: Objection, Your Honor. We would just
22 object to the extent there needs to be a question so that the
23 witness --

24 THE COURT: Yeah, and -- though this last one, part
25 of his intonation, in other words, if he had raised his voice,

1 I think this is a question. It's short. It's short enough, it
2 doesn't seem to be electric. So did you --

3 THE WITNESS: I believe I understand.

4 THE COURT: Then go ahead.

5 THE WITNESS: If I understand your question
6 correctly, Mr. Dougherty, yes, you have to indicate the basis
7 for allowing a federal court to even hear the case because
8 there's certain types of cases that the federal government --
9 that the federal courts do not hear at all. And you have to
10 indicate why you believe the federal courts are the appropriate
11 court to hear a particular case. So I believe you would have
12 had to put that on the cover sheet.

13 BY MR. DOUGHERTY:

14 Q. And there was a summons issued?

15 A. I believe so. That should be on the docket.

16 Q. Okay. And could you then explain to the jury what the
17 procedure is for a District Court to establish tribunal
18 jurisdiction?

19 A. Well, I'm not sure -- I believe they have to establish
20 subject matter jurisdiction and personal jurisdiction over --
21 I'm not sure what you mean by tribunal jurisdiction. It's not
22 a term I'm familiar with.

23 Q. And I'll be able to present this in my case-in-chief. The
24 Supreme Court of the United States has indicated in *Sebelius*
25 *versus* --

1 THE COURT: I got to cut you off here now. You can
2 ask questions.

3 MR. DOUGHERTY: I'm trying to get the foundation for
4 the question. And if it specifies that the tribunal
5 jurisdiction can be attacked at any time even by a --

6 THE COURT: So I need to stop you because he's
7 already said he doesn't know what you mean by tribunal
8 jurisdiction.

9 BY MR. DOUGHERTY:

10 Q. Okay. So my point is, are you actually authorized to
11 practice in the Middle District of Pennsylvania?

12 A. Am I? Yes, I'm admitted to practice in the Middle
13 District of Pennsylvania.

14 Q. And under Federal Rule of Civil Procedure 11, you would be
15 required to, in fact, make some effort to do this research
16 before making any response to the Court to assure that the
17 Court can rely on it, it's not frivolous, whether you're a
18 represented or unrepresented party, that is one of the
19 requirements to do so; correct?

20 A. To be admitted to practice.

21 Q. No, no, that anything that you file with the Court, you
22 have to have said, I've done sufficient research that this
23 filing that I'm making is not done for abuse or waste of time
24 or increasing litigation expense, I've actually done that
25 research?

1 A. Yes. You have to file -- you can't file frivolous or
2 false things with the Court.

3 Q. Okay then. So when were you served as -- or better
4 question would be, the service was originally made to the
5 Attorney General, I guess, and then it was assigned to you
6 after they received service?

7 A. So the way it works is there's a statute in Pennsylvania
8 called the Commonwealth Attorney's Act where if a state
9 individual or a state entity gets sued, then that agency or
10 individual will send the case over to our office. And we can
11 either accept the case, and then we represent the individual or
12 the entity or individuals, or we send it back to the original
13 agency or individual.

14 So I believe in this case, once your lawsuit was sent to
15 Mr. Dupes, then the Department of Revenue would have sent a
16 formal request to my office to represent Mr. Dupes in your
17 lawsuit. And then my supervisor assigned the case to me.

18 Q. I'm a little confused because the procedure for this
19 action requires not only that it be served on the agency, but
20 it also has to be served on the Attorney General separately.
21 And it was. And it was signed for in the docket as of August
22 31st of 2017. And you're not familiar with that?

23 A. If I recall correctly, the issue -- as far as Mr. Dupes
24 was concerned, I can't speak to the other defendants, in
25 Pennsylvania, there are certain rules as to how you actually

1 serve an individual. I believe that Mr. Dupes did receive a
2 copy of your lawsuit at some point, and that's what triggered
3 the actions to assign me to the case.

4 If I recall correctly, you e-mailed a copy of it to Mr.
5 Dupes or you mailed it yourself. And under Pennsylvania law,
6 that's not a proper way to inform a defendant that they've been
7 sued if they work for a state agency. And I believe that was
8 one of the problems with why the case never proceeded any
9 further after you filed it.

10 Q. Well, again, the record will reflect that the Attorney
11 General was served by certified mail return receipt, and the
12 Attorney General of Pennsylvania signed for it on August 31st,
13 2017. I'm just going to assume that you're unaware of that and
14 therefore --

15 MR. PERRI: Your Honor, I am going to object because
16 the question, to the extent that it assumes facts not in
17 evidence, and I think that what the Defendant is trying to do
18 is relitigate the issues that were ruled upon by Judge Conti in
19 that decision.

20 THE COURT: All right.

21 MR. PERRI: The jury will have the opportunity to
22 read the decision if they would like to see the reasoning and
23 the facts. But I'm not sure that it's relevant to the issues
24 here.

25 THE COURT: All right. So Mr. Dougherty, you do need

1 to keep yourself to questioning. If you want to present
2 evidence, and you want the record to reflect certain things,
3 you can do that. But you need to ask this witness questions
4 and not testify. Okay?

5 MR. DOUGHERTY: Okay. And there's --

6 THE COURT: So when you say, for instance, that
7 something occurred, and you stated, and you keep going and
8 adding facts, that's no longer a question. That crosses the
9 line. All right?

10 BY MR. DOUGHERTY:

11 Q. So let me just try and ask it this way. Could you give
12 the jury, because the docket is now in evidence, okay, what
13 your response, the document number that you responded in that
14 case?

15 A. I -- I'd have to look at the docket.

16 Q. Could you take the time to do so?

17 A. Sure. I believe it can be brought up on the screen.

18 THE COURT: Why don't we just hand it? Can somebody
19 from your table please hand the document in question to the
20 witness?

21 MR. DOUGHERTY: A certified copy of the docket.

22 THE COURT: Then you want him to look for what?

23 MR. DOUGHERTY: His response.

24 THE COURT: To what though?

25 MR. DOUGHERTY: To the complaint.

1 THE COURT: To the complaint, all right.

2 THE WITNESS: Okay. Let's see.

3 MR. DOUGHERTY: Characterized as complaint, it was
4 the declaratory judgment action.

5 THE COURT: All right.

6 THE WITNESS: Okay. So I see on here docket entry 17
7 is when it indicates notice of appearance by Caleb Curtis
8 Enerson on behalf of Jared Dupes. That indicates that I
9 informed the Court that I was representing Mr. Dupes. (Pause.)
10 Okay. It looks like the next entry regarding service and Mr.
11 Dupes was actually something --

12 BY MR. DOUGHERTY:

13 Q. Excuse me. I asked you the question, when did you file a
14 document in the case?

15 A. I don't know if I did other than informing the Court that
16 I represented Mr. Dupes because I believe, from my reading of
17 docket entry 55, it looks like Judge Conti realized that Mr.
18 Dupes had never been served with the lawsuit properly. So
19 there was an order asking why Mr. Dupes should not be dismissed
20 from the case. And then you were ordered to respond to that by
21 February 9th, 2018. And that was entered on the docket on
22 January 19th of 2018.

23 So I don't believe I filed a response to that. I believe
24 Judge Conti noted that potential issue and then ordered you to
25 respond to the issue of whether or not Mr. Dupes had been

1 served.

2 Q. So it's also in that document -- or in the opinions
3 referred to by Mr. Perri that the case was transferred to Judge
4 Conti on November 1st of 2017?

5 A. Yes, that's correct.

6 Q. Okay. And when did Keith Dougherty seek default in the
7 case?

8 A. (Pause.)

9 Q. You'll find it's September 23rd, 2017?

10 A. Looks like on September 23rd, 2017, docket entry 13, it
11 says, motion for entry of default, Pennsylvania Unified
12 Judiciary and Jared Dupes by Keith Dougherty. So I believe --
13 and I believe there were other attempts to seek default, but
14 that appears to be the first.

15 Q. I would like to focus on the date though. The default was
16 sought on September 23rd, 2017. And when was the case assigned
17 to Judge Conti?

18 A. It looks like the case was assigned to Judge Conti on
19 November 1st, 2017.

20 Q. So what is the procedure, if you could tell the jury, as
21 to when a plaintiff moves for default against a litigant who
22 has failed to plead and respond and that matter is referred to
23 by affidavit or otherwise in the process?

24 A. Well, I believe -- so an individual, the Plaintiff, will
25 file seeking default. And then ultimately, it's the Clerk's

1 office, I believe, who actually enters the default who
2 determines that default should be entered against the opposing
3 party. And then they'll enter the default.

4 Q. What is the actual wording in the Rule 55?

5 A. I'm not sure I understand your question.

6 Q. The procedure, obviously, is someone has to be served,
7 okay. So you would actually at that point then either request
8 default or you would file a motion for default. And you do it
9 under a particular rule, the rule is 55. What does Rule 55 say
10 and require the Court? What must the clerk do in response to
11 that rule?

12 A. I'm not sure to be perfectly honest what Rule 55 says
13 specifically without seeing it.

14 Q. Okay. So again, I was unable to have the slides prepared
15 that I was looking for, but it will be simply that the clerk
16 must enter the parties' default. Now what happens after the
17 parties' default is entered?

18 A. I believe if a default is appropriately entered, then I
19 believe the only issue is when the Court will decide what
20 damages would be appropriate in that case.

21 Q. But you're not sure of that?

22 A. I'm not sure because I don't know if I've ever had a case
23 that had a default judgment entered in it. It's
24 extraordinarily rare.

25 Q. But the point is, default judgment is way down the road

1 yet. I'm talking about what happens when the clerk enters
2 default. Are you aware of what happens when the clerk enters
3 default?

4 A. I mean, it would be entered onto the docket, I believe.

5 Q. Yes. And it's simply a docket entry. And then they mail
6 out a notice to the Defendant that you have a certain amount of
7 time to respond. Okay?

8 A. That sounds right, but, again, I'm not that familiar with
9 default because, again, it really almost never happens.

10 Q. Okay. So at that point, whoever is the recipient of the
11 default notice has 28 days to file a response. And at that
12 point, as long as they have any defense whatsoever, the Court
13 is obligated to open the default and proceed accordingly. So
14 when you're in the process of doing this, we're talking about
15 you're not really sure about the clerk's procedure, you haven't
16 actually entered anything in the case, but yet you're expanding
17 on all of these filings as they were frivolous, vexatious,
18 whatever. What are you basing your understanding of that on?

19 A. So if I understand your question correctly, the reason
20 that no -- that a more substantive response by me was never
21 filed against Mr. -- on behalf of Mr. Dupes is because you did
22 not properly serve Mr. Dupes with notice of a lawsuit. I'm not
23 saying he didn't receive a copy of it in some way, but the
24 precise rules as to how Mr. Dupes was to be served didn't
25 happen. And as a result of that, the case never -- it's as if

1 the case never really got out of the starting gate.

2 Q. So would you be surprised to find out that that is not an
3 acceptable way to defend?

4 A. I don't -- if I understand your question correctly, I
5 don't agree with that.

6 Q. Again, because I was not aware that we would be moving to
7 this point, I thought we had other things, I haven't prepared
8 the slide. But in fact, the proper procedure --

9 THE COURT: Do you want to show the rule?

10 MR. DOUGHERTY: If I could, yeah.

11 THE COURT: Okay.

12 MR. DOUGHERTY: I need Rule 55, and I need Rule
13 12(h) .

14 THE COURT: So, Mr. Dougherty, there is an elmo. So
15 you can show, as if it's a slide, Rule 55. All right?

16 (Pause.)

17 THE COURT: So you wanted to put Rule 55 on a slide?

18 MR. DOUGHERTY: Yeah.

19 THE COURT: So we will have the exact same thing on
20 the elmo.

21 (Pause.)

22 THE COURT: Okay. All right. So you can put forth
23 Rule 55 underneath that, and it will be a slide.

24 MR. DOUGHERTY: I don't have a copy of Rule 55.

25 THE COURT: I thought you said you were given it.

1 MR. DOUGHERTY: No, he gave me a copy of the docket
2 so I could refer to it.

3 THE COURT: Give us a second.

4 (Pause.)

5 THE COURT: Do you want to take a quick break while
6 we're doing that? Sound good? Why don't you all use the
7 restroom and we'll try to get you back in here. We'll chat.
8 We'll try to make it quick. Thank you very much.

9 (Jury left for a recess at 3:02 p.m.)

10 THE COURT: So look, there hasn't been an objection,
11 but I'm only going to let this go so far, right. So, Mr.
12 Dougherty -- when you're ready?

13 MR. DOUGHERTY: Um-hum.

14 THE COURT: All right. So this is largely
15 irrelevant. I'm letting you go because, to the extent I'm
16 going to give you some freedom, if you will, okay, but
17 ultimately it doesn't matter. It doesn't matter whether you're
18 right or whether you're wrong or whether Judge Conti was right
19 or she was wrong on the interpretation of Rule 55. That is
20 irrelevant. All right?

21 Now it's relevant that the idea of a motion for a
22 default is relevant because it gives context. It explains
23 things.

24 MR. DOUGHERTY: That's what I'm trying to do.

25 THE COURT: But it is one thing to give context, it

1 is another thing to say it justifies. Right? So even if
2 you're right, that doesn't mean you can send a threatening
3 communication. Now what's relevant is whether the
4 communication is threatening in the context of some of your
5 filings because they have a lot of words, right.

6 So I'm letting this go, but I just want you to be
7 aware, we're not going to spend an hour on what your
8 interpretation of Rule 55 is.

9 MR. DOUGHERTY: I'm about to move on to what I really
10 want to get to. I'm just addressing that there's been a lot of
11 rhetoric that it's vexatious --

12 THE COURT: I agree, because, in other words, you get
13 to say, hey, listen, vexatious, is that what it really means,
14 because, in fact, I have an argument and here's what it really
15 means. That's why I'm letting you bring it in to show what
16 your interpretation of Rule 55 is, it might be justified by the
17 rules. I'm letting you bring that in, okay?

18 I just want to caution you, like it's already 3:00,
19 we're not going to be here until 4:00 talking about whether
20 you're right or wrong about Rule 55.

21 MR. DOUGHERTY: I don't expect much more time on this
22 other than to show it. If I'm going to develop it further,
23 I'll do it myself from the stand.

24 THE COURT: All right, that's fine. You can show
25 them Rule 12(h). What else of the slides that you didn't have?

1 You basically now -- this is in effect a slide --

2 MR. DOUGHERTY: Yes.

3 THE COURT: -- of Rule 55.

4 MR. DOUGHERTY: And what I got is pieces of something
5 else that I can fold over and make into a slide and get to that
6 issue.

7 THE COURT: Okay, that's fine. You need to show that
8 to the Government before you do that.

9 (Complied.)

10 THE COURT: While he's doing that, Mr. Young, did you
11 have something?

12 MR. YOUNG: Just two things, Judge. One, I wanted to
13 clarify that I handed up standby counsel's exhibit trial folder
14 to Mr. Dougherty. I think it will help him be organized in the
15 overall proceeding. Two, I'm only standby counsel, and I
16 understand what the Court said, I think you've taken care of my
17 concern, I think that Mr. Dougherty has some right in fair
18 response to show the jury that he wasn't acting in a simply
19 vexatious --

20 THE COURT: I agree, yeah.

21 MR. YOUNG: -- or, you know, frivolous manner. The
22 ultimate issue ultimately shouldn't be determined, that's what
23 we're here for. I think he should be allowed some leeway to
24 establish he thought he was doing certain things that did
25 comport with the law and were appropriate to do.

1 THE COURT: And I agree with that. I think my ruling
2 is consistent with that.

3 MR. YOUNG: I agree.

4 THE COURT: All right. So I will allow that. Can
5 you go forward? Does anybody need a restroom?

6 MR. DOUGHERTY: I don't need a restroom.

7 THE COURT: How late are we going to go to? Can you
8 go until 5:00?

9 MR. DOUGHERTY: I will probably need it between now
10 and 5.

11 THE COURT: I think maybe if you go quickly now, it
12 would be most efficient, if that makes sense for you? The
13 reason why, Mr. Dougherty, the way the courtroom, the
14 courthouse is configured, we can't have you go in the hallway
15 and be seen being escorted by Marshals. That would be unfairly
16 prejudicial to you. So we have to try to time it.

17 So if it's acceptable to you, and I think it is,
18 let's take a quick break and just tell the jury we need a few
19 minutes.

20 COURTROOM DEPUTY: Sounds good.

21 MR. YOUNG: When Mr. Dougherty comes back, can we
22 have a two-minute discussion about something Mr. Dougherty was
23 concerned about? Maybe a presentation he would need some help
24 with? I just want to talk about that.

25 THE COURT: We'll do that before we let them go. I

1 mean, in other words, I think we can let them go at 5. I guess
2 the Marshals, what time do you have to have him out?

3 DEPUTY MARSHAL: Whenever, Your Honor.

4 THE COURT: That's why people love the Marshals. And
5 I mean that.

6 MR. PERRI: Judge, during the lunch break, one of the
7 Marshals was on the elevator with Mr. Dougherty and one of the
8 jurors was also using the same elevator. I just wanted to let
9 you know.

10 THE COURT: At the same time?

11 MR. PERRI: I believe.

12 COURTROOM DEPUTY: With Mr. Dougherty?

13 MR. PERRI: I think that's what he told me. I don't
14 think that gentleman is here right now. But --

15 (Deputy Marshal is conferring with Mr. Perri.)

16 THE COURT: So I'm going to state for the record what
17 I just overheard the Deputy Marshal say, that, in fact, the
18 juror was not on the same elevator, and, in fact, I think it is
19 most important, Mr. Dougherty was not in handcuffs, and he's
20 wearing street clothes.

21 So -- and Mr. Dougherty, did you have any concerns
22 about this episode?

23 MR. DOUGHERTY: No.

24 THE COURT: Okay.

25 MR. DOUGHERTY: In fact, I don't think I'm hiding the

1 fact that I'm incarcerated. I mean, it's just --

2 THE COURT: Well, you may not be, but we're certainly
3 not putting it in front of the jury. And it's not relevant.
4 And a lot of defendants would think it would be prejudicial.
5 And so -- I mean, I can't stop you from saying, by the way, I'm
6 incarcerated. That's true, you could open the door.

7 You may want to talk to Mr. Young. Again, I know
8 he's standby. That's the problem, right. But he's there to
9 offer some legal advice. And there's an expression that
10 lawyers use about opening the door.

11 MR. DOUGHERTY: Um-hum.

12 THE COURT: And you might want to be very careful
13 about opening the door by saying something to the effect that,
14 I'm detained. That could lead to all sorts of things that may
15 not be helpful to you. But, all right, let's take a bathroom
16 break.

17 (Recess was taken at 3:09 p.m. and proceeding
18 reconvened at 3:22 p.m.; without the jury.)

19 THE COURT: Okay, ready? Bring the jury in. Do you
20 have Rule 12 as well, Mr. Dougherty?

21 MR. DOUGHERTY: It's in the book.

22 THE COURT: Right. Did this thing get sorted out?
23 The other things Mr. Dougherty wants to put on the screen, you
24 saw?

25 MR. PERRI: He showed us a couple of things, Judge.

1 One of them appears to recite some Pennsylvania state law.
2 Obviously, I'm going to be watching to make sure that he does
3 not make Pennsylvania state law part of this proceeding because
4 it has no relevance in the federal system.

5 THE COURT: Okay.

6 (Jury was brought in at 3:23 p.m.)

7 THE COURT: Mr. Dougherty.

8 **CROSS EXAMINATION (CONTINUED)**

9 BY MR. DOUGHERTY:

10 Q. So, Mr. Enerson, I have up on the screen the actual copy
11 of the rule just for clarifying what we've been talking about
12 and whether it's vexatious, frivolous, or whatever the case may
13 be. Can you read Rule 55, paragraph A, for the jury, please?

14 A. Sure. Entering a default. When a party against whom a
15 judgment for affirmative relief is sought has failed to plead
16 or otherwise defend, and that failure is shown by affidavit or
17 otherwise, the clerk must enter the party's default.

18 Q. That seems like a pretty simple specific sentence,
19 correct?

20 A. Yes and no.

21 Q. Must enter the party's default is not equivocal in any
22 way. Correct?

23 A. Yes, but it also indicates that the failure has to be
24 shown by affidavit or otherwise.

25 Q. What does or otherwise mean to you?

1 A. I would interpret that to mean by another sufficient means
2 to show that --

3 Q. But I'm saying in plain ordinary English, because the jury
4 didn't go to law school, what does or otherwise mean?

5 A. By another manner.

6 Q. Any manner at all?

7 A. I suppose. I'm not sure exactly.

8 Q. Well, that's the plain and ordinary meaning of it. Now
9 could you then go to paragraph B, number 1, and read that for
10 the jury, please?

11 A. By the clerk. If the Plaintiff's claim is for a sum
12 certain or a sum that can be made certain by computation, the
13 clerk, on the Plaintiff's request, with an affidavit showing
14 the amount due, must enter judgment for that amount and costs
15 against a Defendant who has been defaulted for not appearing
16 and who is neither a minor nor an incompetent person.

17 Q. By your own testimony, you said you never did file a
18 response on behalf of Jared Dupes or the Pennsylvania Corporate
19 Net Income Tax Department, did you?

20 A. I did not, no.

21 Q. Okay. So now what we need to do is go to Rule 12 because
22 that explains the timeframe and the consequences of not having
23 made a response, what that amounts to. And specifically -- I'm
24 unfamiliar with this format, but I'm looking for 12(h).

25 THE COURT: Do you want to hand it up? I can do it

1 because I'm familiar with this rule. There is different books,
2 just so you all understand, many different types of books that
3 publish the same rules. This one is made for courts.

4 BY MR. DOUGHERTY:

5 Q. Okay. So being familiar with the rule -- okay, there it
6 is, 12(h). I'm not very good at this thing here, but I'll try
7 to make sense of it. Waiving and preserving certain defenses.
8 It's kind of difficult. Let me see if I can get this better
9 situated. (Pause.) Could you read 12(h) (1)?

10 A. When some are waived. A party waives any defense listed
11 in Rule 12(b) (2) to (5) by -- and then do you want me to
12 continue?

13 Q. Yes.

14 A. -- by, A, omitting it from a motion in the circumstances
15 described in Rule 12(g) (2); or, B, failing to either, one, make
16 it by motion under this rule, or, two, include it in a
17 responsive pleading or in an amendment allowed by Rule 15(a) (1)
18 as a matter of course.

19 Q. And by your own admission, you never filed anything?

20 A. I did not file a response to the pleading, no.

21 Q. So could you read (2), (3), (4), and (5), that you had
22 waived on behalf of your client? Over on the left-hand side?

23 A. If you are referring to 12(b)?

24 Q. Yes.

25 A. Defenses?

1 Q. Yes, 12(b) (2), (3), (4), and (5). That's what it says,
2 you waived them by failing to either put them in a motion or
3 filing a responsive pleading. So what did you waive on (2),
4 (3), (4), and (5)?

5 MR. PERRI: Objection, Your Honor, as to the form of
6 the question. It assumes that he waived something, and I think
7 the witness would dispute that.

8 THE COURT: You want to reword the question -- what
9 you really want -- you want him to say what does (2), (3), (4),
10 and (5) say, right?

11 BY MR. DOUGHERTY:

12 Q. Could you read 12(b) (2) through 12(b) (5) for the jury?

13 A. Sure. 12(b) (2) is lack of personal jurisdiction.
14 12(b) (3) is improper venue. 12(b) (4) is insufficient process.
15 And 12(b) (5) is insufficient service of process.

16 Q. So would it be fair to say if, in fact, you applying the
17 Rules of Federal Civil Procedure, when someone serves you with
18 a copy, and you fail to respond, the clerk is properly
19 authorized to enter default, and if, in fact, you don't respond
20 to that, it's properly allowed to enter default judgment so
21 long as the amount you're seeking is a specific sum or can be
22 made certain by a sum?

23 A. If service is done properly, I agree with that.

24 Q. Again, that presumes facts that aren't actually in the
25 rule. These rules are, in fact, clear and easy to understand

1 for even jurors who hadn't attended law school. You do
2 something in a timely fashion, and these things happen.

3 Now what would be the response if, in fact, you received a
4 notice from the clerk that you've been put in default? What
5 are you required to do at that point?

6 A. If you receive a notice of default from the clerk?

7 Q. Just default?

8 A. You can either not respond, in which case it would
9 ultimately become a default judgment, or you could file a
10 motion to open the default.

11 Q. But specifically, which motion are you required to file?

12 A. I believe it would be a motion to open default.

13 Q. Would you be surprised that it's 55(c)?

14 A. I'm not entirely sure. Like I said, I really don't --

15 Q. That's what I'm saying. You were making a lot of comments
16 earlier about me doing this in an incoherent, frivolous,
17 vexatious way, and you have no idea that you walked your
18 client, the Corporate Net Income Tax and Franchise Department
19 of Pennsylvania, into default and default judgment when the
20 issue that was presented, which was, what is the definition of
21 corporation in the Commonwealth of Pennsylvania?

22 MR. PERRI: Objection, Your Honor. That issue has
23 been decided by the Court. And now we are attempting to
24 relitigate it through this witness who is simply representing
25 one of the many parties. The decision is final.

1 MR. DOUGHERTY: Your Honor, the arguments being
2 presented is under Rule 12(b) (4) -- 16(b) (4). The order was
3 without tribunal jurisdiction and, therefore, is void.

4 THE COURT: All right.

5 MR. DOUGHERTY: But the question here is about me
6 doing things in a vexatious way without any material backing,
7 nothing supporting it --

8 THE COURT: Let me stop you there. So I've permitted
9 some of this testimony, and I'm going to let this question go,
10 because there was testimony that was elicited about Mr.
11 Dougherty being vexatious, okay. But whether or not Judge
12 Conti was right or wrong in any decision she made has no
13 relevance, all right.

14 So, in other words, neither the Government nor Mr.
15 Dougherty are being allowed to relitigate what was before Judge
16 Conti. There's a little bit of overlap because in the
17 testimony, there came some statements that said about Mr.
18 Dougherty being vexatious. So I'm allowing some questioning on
19 it for that limited purpose. That's the only reason you're
20 allowed to consider this evidence. Okay? So I'm going to
21 overrule the objection, allow this question, and let's keep in
22 mind the time. Okay?

23 MR. DOUGHERTY: Yes.

24 BY MR. DOUGHERTY:

25 Q. So now we've pretty much -- there's at least a rational

1 basis for disagreement. So you would properly say that all of
2 these cases, like I had said in my opening, are related to one
3 issue, whether or not Keith Dougherty is allowed to represent
4 himself, his companies, or clients that are categorized as
5 friends.

6 In fact, whether they -- we're not going to relitigate the
7 fact that they actually had signed a supplemental wet signature
8 along with the ECF, that's not relevant because of other
9 issues.

10 But I would like you to read into the record for the jury
11 what's on the screen right now?

12 A. Article VI of the Pennsylvania Frame of Government (1682).
13 That in all courts, all persons of all persuasions may freely
14 appear in their own way and according to their own manner, and
15 there personally plead their own cause themselves or if unable
16 by their friends. *Faretta v. California*, 422 United States 806
17 (1975) Footnote 37. Then it says, Schedule No. 1, adopted with
18 the Pennsylvania Constitution, February 10, 1777.

19 MR. PERRI: Your Honor, I have to object to the
20 Defendant's line of cases. I'm not sure if that's an actual
21 quote from the case or not. And I'm not sure what the
22 connection is to this Frame of Government.

23 THE COURT: Right. So I'm going to sustain the
24 objection now because we've gone for the limited purpose into
25 explaining or delving into whether or not, and to what extent,

1 Mr. Dougherty is vexatious or not. That's the limited purpose
2 I let those materials and those questions go. And that's the
3 only purpose for which you should consider it. And so we need
4 to move on. All right?

5 MR. DOUGHERTY: Okay. One last question relative to
6 his comment about me quoting the common law and it being
7 ancient and not applicable. This is the current version of the
8 common law in Pennsylvania.

9 MR. PERRI: Again, Your Honor, it doesn't matter what
10 the common law --

11 MR. DOUGHERTY: Again, it was in response to the
12 witness saying that I am making frivolous references to ancient
13 law that, in fact, is still valid in the -- this is printed off
14 the current version of the Pennsylvania Constitution as it
15 exists today.

16 THE COURT: Okay. So the problem here is that we're
17 now getting into legal issues, and it's the judge who decides
18 what the law is. It's not the litigants. It's not witnesses.
19 It's not parties. So the problem is, you're showing one, I
20 don't know, perhaps a statute, I don't know if it's an accurate
21 statute or not, you're putting in front. And, you know, look
22 how big that book is in front of you. The -- there's lots of
23 laws on the books. There's lots of cases.

24 And I'm going to sustain this objection because --
25 and I'm going to sustain it under Rule 403, which is a Federal

1 Rule of Evidence. And that rule requires that I sustain --
2 that I evaluate how probative, how proof-worthy a piece of
3 evidence is, and balance that against the unfair prejudice and
4 whether it confuses the jury and whether it's duplicative. I
5 think we've established -- I think you made your point that you
6 are aware of the law.

7 MR. DOUGHERTY: Just for the limited purposes of the
8 common law rule, you understand what I'm saying?

9 THE COURT: Yes.

10 BY MR. DOUGHERTY:

11 Q. Now back to the letter that you were -- the e-mail that
12 you were testifying about. At page 2, Government's Exhibit
13 U.S. 00001415?

14 THE COURT: Do you want this put up?

15 MR. DOUGHERTY: Well, I guess I could.

16 THE COURT: Could we have it put up? Thank you very
17 much. And I thank the Government for being cooperative. Oh,
18 you have a copy, okay. You don't have to put it up. Mr.
19 Dougherty -- thank you.

20 BY MR. DOUGHERTY:

21 Q. So it says, Once again, even if Judge Connolly is correct
22 in that all that it takes is a rational basis to ignore the
23 sixth amendment protections, the Supreme Court has said the
24 moment Keith Dougherty asserted Rule 12.3 and the AUSA from
25 West Virginia defaulted, the indictment must be quashed. The

1 reference to Rule 12.3, are you aware what that is?

2 A. I'm not sure what rule you are referring to there, no.
3 There's multiple Rule 12's.

4 Q. Again, it is the Federal Rule of Criminal Procedure 12.3.
5 And, in fact, it addresses what is called an official authority
6 defense?

7 A. Okay.

8 Q. But you were commenting as though you were an expert on
9 the subject. I thought maybe you were familiar with that?

10 A. I don't practice federal criminal law, so I was not aware
11 that that's what you were referring to when you indicated Rule
12 12.3. But again, the case I handled with you, Mr. Dougherty,
13 was a civil case. It wasn't a criminal case.

14 Q. Exactly. And it was actually a declaratory judgment
15 action that later in the docket, as you can see at the
16 Government's document here, let's see where it is, default --
17 let's see -- it was -- yes, on the very same date, 9/23, it's
18 ECF 9, joinder of complaint at 15-CV-1845. So that was simply
19 an amendment to add in the enforceability of the definition of
20 corporation to that case. So that was the case you were on.
21 And, again, under this particular presentation, the Defendant
22 was actually served on August 31st, 2017. You entered your
23 appearance for the first time on October 2nd, was it?

24 A. I entered my appearance on October 2nd, 2017, on behalf of
25 Mr. Dupes.

1 Q. Right. So that was sometime after default had already
2 been sought against your client. Now there was also some
3 questions about e-mails between you and I. And I had indicated
4 after seeing your entry of appearance, do you remember
5 receiving an e-mail from me that we were required by Rule 16 to
6 cooperate and coordinate for a status conference with Judge
7 Conti?

8 A. I believe you're referring to the Meet and Confer Statute.
9 And by local rule, that's not required to occur in a pro se
10 case where you're representing yourself, as you were. So we
11 never had a Rule 16 -- we never had to have a Rule 16
12 conference.

13 Q. So then you bring up a good point. You just made
14 reference to a local rule?

15 A. Yes.

16 Q. Okay. So could you explain for the jury the order of
17 operations in federal procedure as far as the correct power,
18 what can be amended, how it can be amended, what rules can be
19 done locally? Could you give a general assessment of that?

20 MR. PERRI: Objection, Your Honor. I would ask that
21 --

22 THE COURT: Yeah, I'm going to -- I think it's beyond
23 the scope.

24 MR. DOUGHERTY: Okay. But you just made a comment
25 that --

1 THE COURT: Just because he mentioned in response to
2 a question you asked him about failing to meet and confer, he
3 mentioned the local rule, I don't think that opens the door to
4 now we get into the legitimacy and scope of a local rule. So
5 I'm going to sustain the objection.

6 BY MR. DOUGHERTY:

7 Q. Okay. So then there was also, and I'm trying to find it,
8 locate it, you indicated about some additional threat or
9 whatever it was that you were trying to characterize. Let me
10 take a moment here to try to find what you were making
11 reference to. (Pause.) Okay, yes, here it is. Thank you.

12 The statement that you had made earlier reading this
13 particular, it says, The crux of the matter is Keith Dougherty
14 avers, which -- could you explain to the jury what avers means?

15 A. In this context, it's Keith Dougherty claims or, you know,
16 claims, I guess, would be another way of putting it.

17 Q. If you shoot Judge Conti in the head and claim necessity
18 under PA's Discretionary Deadly Force Doctrine. Are you
19 familiar with that statute?

20 A. I don't know of any Discretionary Deadly Force Doctrine in
21 Pennsylvania, no.

22 Q. And again, if it were to be characterized by me as a
23 Discretionary Deadly Force Doctrine, but its title was actually
24 self defense, are you aware of the Pennsylvania statute on self
25 defense?

1 MR. PERRI: Objection, Your Honor. We covered this.

2 THE COURT: Okay, all right, that's sustained.

3 MR. DOUGHERTY: Pardon me?

4 THE COURT: That's sustained. We talked about that
5 at a pretrial conference. You'll recall I made a ruling.

6 MR. DOUGHERTY: Okay. But we're reading it here, and
7 I thought I had to be given a fair opportunity to explain what
8 this is. It's offered as evidence that I've done something
9 wrong. In fact, you've entered it into evidence. I did not
10 object. Rule 12.3 and Discretionary Deadly Force Doctrine is
11 what Count 4 is based on. I have to be given an opportunity to
12 respond.

13 THE COURT: I'm going to sustain the objection.

14 MR. DOUGHERTY: Okay.

15 BY MR. DOUGHERTY:

16 Q. So with that, as I scroll down here further, this is a --
17 actually an excerpt out of a judicial misconduct and disability
18 action complaint and then Chief McKee's response. Let's see
19 here. Okay. Yes, in the smaller print up above, could you
20 just read, Complainant is a small business owner, and from
21 there down to the larger font?

22 A. Complainant is a small business owner. He is also a
23 frequent and prolific pro se litigant who has been involved in
24 civil cases before subject judges 1 through 4 and in appeals
25 before subject judges 5 through 7 over the course of the past

1 several years. Complainant's proceedings are too lengthy and
2 complex to discuss in detail, but several can be described in
3 brief to provide context for the instant judicial misconduct
4 complaints.

5 In one proceeding, in July 2011, complainant filed a
6 notice of removal in a state court proceeding in which he and
7 his company were named as defendants. The matter was assigned
8 to subject judge 3 and was referred to subject judge 1. In
9 September 2011, subject judge 3 adopted the recommendation made
10 by subject judge 1 and remanded the matter to state court based
11 upon a defect in the removal process, namely, that complainant,
12 a non-attorney, could not file a removal notice on behalf of
13 his company.

14 Q. Okay. So once again, this theme repeats itself. All of
15 these disputes are around the concept that Keith Dougherty is
16 not allowed to represent himself or his companies when, in
17 fact, the excerpt that you read in earlier from the Frame of
18 Government indicates that Keith Dougherty has been allowed to
19 do that since 1682 and that has carried through to the
20 Pennsylvania Constitution and exists today.

21 So therefore, we may have a circumstance if, in fact, we
22 were having disputes going back and forth that have never been
23 resolved because we've never had a valid tribunal as we have
24 here?

25 A. If I understand your question correctly, you're saying

1 that all of your cases have centered around whether or not you
2 can represent your businesses or yourself, and you're basing
3 that on that excerpt that we saw earlier. I don't agree with
4 you on that. I don't believe that that gives you the basis to
5 represent entities in court.

6 Q. And that is a fair point. But there is a complete
7 difference between being vexatious and scatterbrained,
8 whatever, when, in fact, we always keep returning to this one
9 subject. And, in fact, that is what the crux of these disputes
10 are. You said it yourself numerous times before I even brought
11 this up.

12 A. Well, I think that the reason that you were described as
13 vexatious is because you have attempted to bring this issue
14 before the courts numerous times, and they have rejected your
15 arguments on that. But you keep bringing it up in various
16 cases.

17 Q. Which brings up a wonderful point and opportunity. Are
18 you aware that in the 11-2631 case, on August 5th, 2011, the
19 Third Circuit granted Keith Dougherty's motion to, in fact,
20 brief this issue and strike down *Simbraw versus U.S.* and its
21 progeny once and for all? Were you aware that I prevailed in
22 that motion?

23 MR. PERRI: Objection. Assumes facts not in
24 evidence.

25 THE COURT: Well, we're asking whether he was aware.

1 He can ask whether he's aware or not.

2 THE WITNESS: I'm not aware of what happened here in
3 a 2011 Third Circuit motion.

4 BY MR. DOUGHERTY:

5 Q. In response to the prosecutor, you had indicated that
6 Keith Dougherty had never prevailed?

7 THE COURT: Okay. Well, so you asked him was he
8 aware. He answered he was not aware. Now you got to move on.

9 MR. DOUGHERTY: Okay.

10 BY MR. DOUGHERTY:

11 Q. So then with that, I think we've clearly established that
12 we have --

13 THE COURT: You got to be careful. You can only ask
14 questions. So we've clearly established something, it sounds
15 like you're about to testify, which you can't do in this
16 position. You're only acting as a lawyer at this point.

17 MR. DOUGHERTY: Okay.

18 THE COURT: So go ahead, but just be careful. It
19 sounds like, to me, like you're going off not into a question.

20 MR. DOUGHERTY: I didn't mean to.

21 THE COURT: Okay. Go ahead.

22 BY MR. DOUGHERTY:

23 Q. So again, the concept here then is that I feel we are
24 fairly in agreement that the crux of these matters is that
25 Keith Dougherty had attempted to appear pro se. In fact, in

1 the matter for -- against the Pennsylvania Corporate Net Income
2 and Franchise Tax Department seeking declaratory judgment on
3 the definition of corporation under Pennsylvania law, are you
4 aware of what that definition is?

5 A. Am I aware of what the definition of a corporation is?

6 Q. Yes, under the Pennsylvania Corporate Net Income Tax and
7 Franchise Department?

8 A. No, I'd have to look at the particular statute.

9 Q. Okay. Since I don't have access to that statute, I would
10 only be able to explain it, so I'll probably have to do that
11 from the stand myself. So the clear example is though, we are
12 aware that the case, and I don't think we made this clear, that
13 the case that you were representing in, that case has an
14 unresolved motion for reconsideration where Judge Conti has
15 actually recused herself after stepping down as chief and
16 taking senior status. Are you aware of that?

17 A. Let me look at the docket. I didn't think there were any
18 pending --

19 THE COURT: He just asked if you were aware of. If
20 you're not aware of it, just answer you're not aware of it.

21 THE WITNESS: No, I'm not aware there were any
22 pending motions.

23 MR. DOUGHERTY: It's fair enough we leave it at that,
24 okay.

25 THE COURT: All right. Thank you. Any redirect?

1 MR. PERRI: No, thank you, Your Honor.

2 THE COURT: All right. You may be excused. Thank
3 you very much. Next witness.

4 MR. PERRI: The United States calls Deputy Marshal
5 Eric Hanna.

6 THE COURT: Mr. Perri, could you do me a favor? When
7 you are speaking, can you remove your mask? It's very hard for
8 the court reporter to hear.

9 MR. PERRI: Thank you.

10 **ERIC HANNA, GOVERNMENT'S WITNESS, SWORN**

11 COURTROOM DEPUTY: State your name and spell it for
12 the record, please.

13 THE WITNESS: My name is Eric Hanna. H-A-N-N-A.

14 **DIRECT EXAMINATION**

15 BY MR. PERRI:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. So you've been sworn in and you stated your name. How do
19 you spell your last name?

20 A. H-A-N-N-A.

21 Q. Where do you work, sir?

22 A. I'm a Deputy United States Marshal.

23 Q. And how long have you been a Deputy Marshal?

24 A. Since 2010.

25 Q. Were you ever stationed in Harrisburg?

1 A. Yes, sir, from 2012 until 2021.

2 Q. All right. Do you have any other law enforcement
3 background?

4 A. I was a patrolman in a town called Upton, right outside of
5 Philadelphia, for roughly eight months, short time period
6 before this job.

7 Q. Can you explain, Deputy Marshal Hanna, what does the
8 Marshal Service do?

9 A. Okay. So we have several areas that we're responsible
10 for. One of the main ones is producing federal inmates to
11 court. We have to serve any legal process from the courts,
12 court orders, summons, fugitive apprehension, like you guys see
13 on the TV shows, and then also judicial security. And then
14 witness protection is another large branch of ours.

15 Q. Okay. So if, for example, there is a threat made against
16 a judicial officer?

17 A. Yes.

18 Q. A judge?

19 A. Yes.

20 Q. Would that come into the purview of the Marshal's service?

21 A. It would.

22 Q. So you would be the investigative agency that would look
23 into that?

24 A. We would initiate the investigation, yes, sir.

25 Q. All right. Through your employment in 2015 --

1 A. Um-hum.

2 Q. -- did you have occasion to encounter a person named Keith
3 Thomas Dougherty?

4 A. I have.

5 Q. And is he in the courtroom today?

6 A. He is.

7 Q. And where is he seated?

8 A. He's seated at the Defendant's table, blue and white
9 striped shirt, blue mask.

10 MR. PERRI: Your Honor, for the record, may it please
11 reflect identification of the Defendant?

12 THE COURT: Yes.

13 BY MR. PERRI:

14 Q. How did that matter come to your attention, that matter
15 back in 2015?

16 A. At that time, I was fresh out of threat investigator
17 school, and I got handed a filing, I believe it was from the
18 Third Circuit, from my judicial security inspector to read over
19 it, and to just conclude if I agree there should be a threat
20 analysis worked up on this filing by Keith Dougherty.

21 Q. Okay. So are you referring to the Third Circuit Court of
22 Appeals?

23 A. Yes, sir, I'm sorry.

24 Q. And the Third Circuit Court of Appeals covers this area,
25 this geographic area?

1 A. It does based out of Philadelphia.

2 Q. And if there is a decision that gets appealed from a
3 District Court here in the Middle District of Pennsylvania, who
4 hears that case?

5 A. The Third Circuit does.

6 Q. The Third Circuit Court of Appeals?

7 A. Court of Appeals, yes.

8 Q. All right. So you find out about this, and did you
9 receive anything in connection with that?

10 A. I received a copy of that, I believe it was April 7th,
11 2015, filing.

12 MR. PERRI: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 BY MR. PERRI:

15 Q. I want to show you what's been marked for identification
16 purposes as United States Exhibit No. 6. I'll ask you to look
17 at that, flip through the pages, and then tell me if you
18 recognize it?

19 A. It looks like the same filing I'm referencing.

20 Q. Okay. And is that the filing that you were talking about
21 earlier?

22 A. It was.

23 Q. That's the document that was filed with the Third Circuit
24 Court of Appeals?

25 A. Yes, sir.

1 Q. Okay. And who was it that had filed that?

2 A. Keith Dougherty.

3 Q. Dougherty?

4 A. Dougherty, sorry.

5 Q. The person you identified here?

6 A. Yes, sir.

7 Q. So you got a copy of that in connection with your
8 investigation?

9 A. I did.

10 Q. All right. And how many pages is it?

11 A. It is 27 pages in this report.

12 Q. Okay. And it indicates at the top the date that it was
13 filed?

14 A. It does. It says filed 04/07/2015.

15 Q. And does it indicate which case it was filed in?

16 A. It does. It has a case number in the top left corner
17 15-1780.

18 Q. And who's it addressed to?

19 A. To the Clerk.

20 Q. The Clerk of the Third Circuit presumably?

21 A. I would assume so.

22 Q. Does this appear to be a fair and correct copy of the
23 document that you received in connection with the
24 investigation?

25 A. Yes.

1 MR. PERRI: Your Honor, at this point we'd ask for
2 admission of United States Exhibit No. 6.

3 MR. DOUGHERTY: No objection.

4 THE COURT: No objection, so it's admitted.

5 BY MR. PERRI:

6 Q. So what did you do in connection with your investigation?

7 A. Well, the very first thing is to read the filing to see
8 what is contained inside the filing. After reading it, I did
9 find some language that can be construed as threats made in the
10 filing. So after that, we would open up a preliminary
11 investigation.

12 That would include to talk to Mr. Dougherty and just to
13 get a feel of where he is and see if he -- see what his issues
14 are, see what his troubles are, see what his intentions are,
15 and to see if we should actually open up a threat case on the
16 individual or maybe he was just very angry this one time and
17 he's let it go and things have calmed down and we would not
18 investigate it any further after that. Just assess the
19 situation initially.

20 Q. You mentioned finding some language in that?

21 A. Yes.

22 Q. In the document that concerned you?

23 A. Um-hum.

24 Q. How would you explain your reaction to that? And how did
25 you perceive it?

1 A. When I read the language, I interpreted it as a threat to
2 whoever he's talking to at that moment in time in that filing.

3 Q. Okay. Could we please see page number 11? And I'm going
4 by the number at the top of the page. Could we please see an
5 expanded view of the second full paragraph?

6 Deputy Marshal Hanna, would you read that, please?

7 A. Yes, sir. If you wish to have all 11 judges assassinated
8 by a well-regulated militia (second amendment) for
9 constitutional crimes as a condition precedent to the
10 publishing of the 28 U.S.C. 46(bravo) rule for other than death
11 penalty cases, write it down for D.C. Circuit review a/k/a a
12 fate worse than death, being told what to do, by a higher
13 power, the Dictionary Act, as identified by the Supreme Court,
14 trumps/avoids *Simbraw* (local custom) under order of operations.

15 Q. I'd also like to direct your attention to page number 26.
16 Would you please -- I'd like to direct your attention
17 specifically on that page to the last two paragraphs at the
18 bottom?

19 A. Um-hum.

20 Q. Would you please read that?

21 A. Yes. If judges must die to preserve liberty and property,
22 under a choice of evils necessity, it is a ground for transfer
23 to the D.C. Circuit, as a better option, under the rule of law
24 as opposed to rule of nobility, for 10-CV-1071/11-2631, and
25 11-CV-1295/11-3598, and 13-CV-447/13-3772.

1 Imagine a O.J. type of trial where the militia gets of
2 Scott free after the coordinated assassination of 11 judges.
3 How ironic? The judges were lawfully assassinated for
4 attempting to establish nobility in the law in violation of
5 Article 1, Section 9 and Section 10.

6 Q. How did you interpret that when you read it?

7 A. I interpreted that he's implying that there are judges
8 that must die to preserve liberty. And then he describes of
9 how the militia would do it in a coordinated assassination.

10 Q. Then can we see the last page, page number 28? I want to
11 direct your attention to these two paragraphs.

12 A. Okay.

13 Q. Would you read that, please?

14 A. Sure. If you are suggesting to decapitate all 11 judges
15 and make a funeral -- I believe that word is pyre -- pyre out
16 of their rotting carcasses, I would suggest that it is a ground
17 for transfer to the D.C. Circuit as a rule of law alternative
18 suggestion, even though the action can be done and still comply
19 with the common law defense of choice of evils.

20 You must provide a copy of the rule and an admission you
21 have violated numerous federal statutes that are jurisdictional
22 in all judgments related to all Keith Dougherty cases and allow
23 calculations of the FTCA damages, or enter defaults as
24 required, and remand.

25 Q. Okay. And again, how did you interpret that?

1 A. I interpreted it as a threat to decapitate 11 judges.

2 Q. And if we could see an enlarged version of the very last
3 sentence? Deputy Hanna, when it says there, in the
4 alternative, how did you interpret that?

5 A. I interpreted that as instead of him committing those
6 threats that he had just written down, the alternative action
7 would be to transfer his case to the D.C. Circuit --

8 Q. And --

9 A. -- as a trade.

10 Q. And your understanding, what does he want?

11 A. He wants his case to be heard in the D.C. Circuit, a
12 change of venue.

13 Q. And if that doesn't happen?

14 A. Then he would have to comply with those threats that he
15 made.

16 Q. I want to ask you about -- I want to ask you a few
17 questions about some things that you may or may not have seen
18 throughout the document?

19 A. Okay.

20 Q. Does the Defendant mention any judges by name?

21 A. I believe I recall one or two judges' names. If I'm
22 thinking of this filing, yes.

23 Q. Can we see page 3, please? Paragraph at the bottom? Does
24 he mention any judges by name there?

25 A. I see four that I am familiar with.

1 Q. Can you name them, please?

2 A. Judge Motz, Judge Carlson, Judge Jones, and Judge
3 Caldwell.

4 Q. Can we skip over to page 6? Last paragraph at the bottom?
5 Do you see any judges mentioned there?

6 A. Judge Frederick Motz and Magistrate Judge Blewitt.

7 Q. Page 11. The last paragraph at the bottom, please? Do
8 you see any judges mentioned there?

9 A. Yes. Towards the bottom, I see Judge Carlson again, Judge
10 Jones again, and Judge Motz.

11 Q. Next page, please, at the top? How about there?

12 A. Same four judges as the first time; Judge Motz, Judge
13 Carlson, Judge Jones, and Judge Caldwell.

14 Q. Next page, please -- I'm sorry, page 14. Any judges
15 mentioned?

16 A. Yes, sir. Judge Frederick Motz, Chief Judge McKee. I'm
17 not aware if Simbraw is a judge or not. I do not know that.

18 Q. Okay. Next page, page 15, paragraph at the bottom. Any
19 judges mentioned there?

20 A. Judge Jordan.

21 Q. Page 18, towards the end of that large paragraph. Any
22 mention there?

23 A. Chief Judge McKee. And Judge Motz at the very last
24 sentence.

25 Q. Page 21. Okay. And the first large paragraph?

1 A. Chief Judge McKee, Judge Motz.

2 Q. And what does he say towards the ends of that paragraph?

3 A. In quotations, it says, all 11 judges could be shot in
4 times of war properly under a choice of evils affirmative
5 defense.

6 Q. When he talks about affirmative defense or words of that
7 nature, how do you interpret that?

8 A. I interpret that, that he feels he is justified in
9 carrying out those threats by that verbiage that he uses.

10 Q. How about towards the -- how about in the next paragraph?
11 Any mention of judges?

12 A. Judge Motz, Chief Judge McKee.

13 Q. And the last paragraph?

14 A. Magistrate Judge Fegley, Judge Motz. That's all I
15 recognize.

16 Q. Page 23, please, towards the top there. Any mention?

17 A. Judge Motz.

18 Q. So fair to say he talks about judges throughout all of
19 this?

20 A. Yes, it is.

21 Q. I want to ask you another question. Does he use the term
22 militia in this particular writing?

23 A. I believe he does.

24 Q. Let me direct your attention to page number 5 at the
25 bottom. Can you read that, please?

1 A. Yes. A well-regulated militia, being necessary to the
2 security of a free state, the right of the people to keep and
3 bear arms, shall not be infringed.

4 Q. Are you aware of what that's a reference to?

5 A. I'm not a hundred percent sure what he's referencing. I'm
6 guessing it's the second amendment, the right to bear and keep
7 arms.

8 Q. And how did you interpret that in the context of his
9 threats and other statements?

10 A. I would interpret something like that, that, one, he has
11 the absolute right to bear arms and keep arms; but, two, he
12 also has the right to have a well-regulated militia.

13 Q. Who was going to carry out these assassinations?

14 A. I would suspect a militia is, according to his threats.

15 Q. Having reviewed this entire writing, does the Defendant
16 ever refer to himself, even if perhaps quoting somebody else,
17 as vexatious?

18 A. I don't believe he does.

19 Q. Let me see if I can refresh your recollection?

20 A. Okay, thank you.

21 Q. Please look at page 2. Down towards the bottom there.
22 Does he use that term to describe himself?

23 A. Dismissed here because he is vexatious not full and fair,
24 see *Marshall versus Jerrico*. I believe he is describing
25 himself there.

1 Q. Over on page 4, in that large paragraph. Does he also use
2 that word?

3 A. Yes, he does.

4 Q. And the next page, the first full paragraph. Does he use
5 it there?

6 A. Yes, he does use the word.

7 Q. Skipping over to page 15. Would you please highlight that
8 one?

9 A. Yes, sir, it's there.

10 Q. Can you read that, please?

11 A. Sure. We all know Keith Dougherty is vexatious is not due
12 process due.

13 Q. Last page. In regards to that last paragraph where you
14 perceived it appeared to you that he was offering an
15 alternative to decapitation?

16 A. Yes.

17 Q. Or assassination. Could we also see the second paragraph
18 at the top? What does he say there?

19 A. Lead follow or get out of the way. Break out your
20 checkbook and let's talk as a better option.

21 Q. A better option to what? How did you interpret that?

22 A. A better option than to him carrying out the threats.

23 Q. Deputy Marshal Hanna, after having reviewed this and
24 noticed this language, were you concerned enough to open an
25 investigation and take specific steps?

1 A. I was.

2 Q. What exactly did you do?

3 A. We went and interviewed Mr. Dougherty at his home.

4 Q. Who all was there?

5 A. It was myself. I had a senior deputy with me, Mike

6 Aleman, and an FBI Agent Chad McNiven.

7 Q. How do you spell the other deputy's name?

8 A. First name is Michael, normal spelling. Aleman,

9 A-L-E-M-A-N.

10 Q. How do you spell McNiven?

11 A. M-C-N-I-V-E-N.

12 Q. Okay. What was your purpose of going out there?

13 A. The purpose was to, in layman's terms, to take Mr.

14 Dougherty's temperature, see where he was at mentally, see how

15 he was feeling, talk about these and inform him that he can't

16 use this kind of language in his filings, it is perceived as

17 threats, and he should stop at least that particular type of

18 activity in his filings, and then also to see if he had really

19 any intention on harming anyone.

20 Q. Did you, in fact, did you and the other marshals, in fact,

21 tell him that this language was being perceived as threatening?

22 A. Yes.

23 Q. In no uncertain terms?

24 A. No uncertain terms.

25 Q. Did you ask him if he intended to carry out this threat?

1 A. I didn't ask him, but my senior, Mike Aleman, asked him,
2 yes.

3 Q. And what did he say?

4 A. Keith Dougherty said, no, he does not intend to carry out
5 those threats.

6 Q. Okay. Was that enough for you though to close out the
7 matter?

8 A. No.

9 Q. Why not?

10 A. Well, I wasn't a hundred percent sure that he was telling
11 the truth. And it's safer to keep the investigation open than
12 to close it and be wrong.

13 Q. Because you're responsible for what?

14 A. I'm responsible for the protection of the justices and
15 judges, anybody in the court family.

16 Q. When something like this gets communicated and brought to
17 your attention, give us an idea of the wheels that it puts into
18 motion?

19 A. Well, first and foremost, if the person reads it that it's
20 intended for, the audience that it's intended for, that can be
21 very harmful to them, their family members, their daily lives.

22 And if they feel like they need to be protected from that
23 filing, that creates a whole other set of gears turning inside
24 the Marshal Services as far as our protection detail on them,
25 their family, all their movements, their home, their work, and

1 then a continuing investigation on the backside of everything
2 as well behind closed doors. You still have to investigate it
3 as you protect the protected.

4 Q. Does all of that take resources?

5 A. A lot. A lot of resources.

6 Q. Do you have unlimited numbers of marshals?

7 A. No, not at all.

8 Q. You're laughing because how many of them are there per
9 court?

10 A. Well, we were down to two here at one point in time. I
11 think we're up to four or five now for court in this office.

12 Q. During this interview, did the Defendant appear to express
13 any emotions?

14 A. He was cool and calm very much at the beginning. He did
15 express agitation to some of his other court filings or things
16 that had happened to him throughout the court process that we
17 tried to listen to. I wasn't very familiar with his other
18 cases or filings that he was speaking of.

19 But he never got -- he never got -- he was never yelling
20 in any sense of the means. He was passionate about what he was
21 speaking about, yes.

22 Q. All right. Was that the only time you went to visit this
23 Defendant, Deputy Marshal?

24 A. No, sir. I visited him a second time.

25 Q. When was that?

1 A. I believe that was the following month, May 8th.

2 Q. Okay. So I don't know if I specifically asked you, I
3 apologize, when was your visit, your first visit?

4 A. Oh, that was, I believe that was April 13th, 2015.

5 Q. Okay. So the next visit was when? Say that again.

6 A. I believe it was May 8th.

7 Q. Okay. Not a whole lot of time passed?

8 A. No, sir. It was roughly a month, just under a month.

9 Q. Okay. And what prompted that visit?

10 A. I believe at the end of the month in April, the date was
11 April 30th, 2015, Mr. Dougherty and a male companion came to
12 the courthouse to file something at the Clerk's office.
13 Something happened at the Clerk's office where they would not
14 accept his filings.

15 And Mr. Dougherty got very heated and passionate about it
16 and started to -- his temper started to get a little heated.
17 And then he was asked to leave. He wouldn't leave right away,
18 so he was escorted out of the building. And his male companion
19 was escorted separately out of the building.

20 Q. What building did that happen in?

21 A. This federal courthouse.

22 Q. This one?

23 A. Yes.

24 Q. And where is Judge Conner's courtroom and chambers?

25 A. In this courthouse.

1 Q. In this one?

2 A. Yes, sir.

3 Q. Through your investigation, did you become aware of any
4 changes in the Defendant's personal circumstances during the
5 investigation?

6 A. I did.

7 Q. And what did you find out?

8 A. After doing a thorough background investigation on him and
9 just looking into him, we did find out that he was recently
10 divorced and also that his house that we visited him at was
11 going to the county sheriff for sheriff's sale as a
12 foreclosure.

13 Q. When you, as a Deputy Marshal investigating this type of
14 thing, are aware that the author of a communication has
15 personal circumstances that are deteriorating --

16 A. Um-hum.

17 Q. -- does that factor into your assessment at all?

18 A. It does. It just -- to me, and in my opinion, and --
19 anyway, in my opinion, it means he has less to lose if he
20 carries out those threats. The more stable that person is in
21 their home life, the more that he has to lose. It's just less
22 -- more he has to lose if those threats are carried out. With
23 less on his personal side to ground him to keep him settled to,
24 you know, change his mind or just talk him down off the ledge,
25 with none of that at home and losing a home, I mean, there's

1 very minimal for him to lose if he does carry out those
2 threats.

3 Q. Deputy Marshal, did you have an opportunity to look at the
4 communications upon which Counts 1, 2, and 4 are based?

5 A. I have.

6 Q. Did you notice any similarity in either content or style
7 from the April 2015 letter that you testified about and these
8 other ones?

9 A. Yes, they're very similar in content and style. He still
10 uses the same verbiage, still talks about militias. He still
11 talks about veiled threats. He still feels the need to defend
12 himself, that he was wronged. And the filings are very similar
13 both verbally and in form.

14 MR. PERRI: Thank you, Your Honor. No further
15 questions.

16 THE COURT: All right. Cross examination.

17 **CROSS EXAMINATION**

18 BY MR. DOUGHERTY:

19 Q. Excuse me, Deputy -- is it DUSM Hanna?

20 A. Yes, sir, DUSM, Deputy United States Marshal.

21 Q. I do remember the encounter was very pleasant.

22 A. Um-hum.

23 Q. And I had expressed, do you recall, when talking to
24 Michael, who was doing all the talking?

25 A. Yes, he was.

1 Q. And I had said --

2 THE COURT: Mr. Dougherty, do you mind, just because
3 I think we're having a hard time hearing you, I know the court
4 reporter --

5 (Mr. Dougherty removed his mask.)

6 THE COURT: Thank you very much.

7 MR. DOUGHERTY: Sorry about that.

8 BY MR. DOUGHERTY:

9 Q. So in any event, the -- your fellow marshal and the FBI
10 agent arrived on the property, and I greeted you on the front
11 porch --

12 THE COURT: Apologies.

13 MR. PERRI: Sorry, I don't mean to interrupt you, but
14 there's no other way for me to bring this to the Court's
15 attention. Your Honor, there's a document that's being shown
16 to the jury.

17 THE COURT: Do you want it taken down?

18 MR. PERRI: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. DOUGHERTY: Excuse me.

21 (Complied.)

22 BY MR. DOUGHERTY:

23 Q. The incident that you just referred to, the April 30th
24 incident where supposed me and a companion came to this
25 building to somehow threaten somebody or try to file some

1 document, what was your account of that?

2 A. Yes. So I was not in the building when this account
3 happened. From reading the report, you tried to file something
4 with the Clerk's office, and it didn't go as well as you had
5 expected it to. That was my understanding.

6 Q. Okay. And if you were to be presented with a document
7 signed under penalty of perjury that, in fact, that document
8 was served by one Michael Cobaugh, and because the secretary at
9 the office thought she had done something wrong, hit the panic
10 button, called the Marshal Service, they detained him and
11 threatened to detain him until Pete -- Deputy --

12 MR. PERRI: Objection, Your Honor. There's no
13 question that's been asked, and these are facts that have not
14 come into evidence.

15 THE COURT: So I'm going to let the question proceed
16 a little bit. I mean, part of the thing is, there's no
17 objections on hearsay grounds, so a lot of information comes
18 in. So I'm just going to let him -- there's got to be a
19 question at the end of this.

20 MR. DOUGHERTY: Yes. In other words, if you were to
21 find something --

22 THE COURT: Get to the question.

23 BY MR. DOUGHERTY:

24 Q. If you were to find something in writing that refutes what
25 you heard secondhand, thirdhand, as to what actually happened,

1 would you find that convincing if it was part of an official
2 filing in D.C. as I had promised you and Michael that I was
3 doing when we met that day?

4 A. Convincing to what, sir?

5 Q. To the fact that it wasn't Keith Dougherty who tried to
6 file something with the clerk and failed?

7 A. Okay.

8 Q. Rather it was Michael Cobaugh who filed a copy of it with
9 the clerk successfully?

10 A. Yes. Yes, I have no reason to argue that.

11 Q. So it would also be fair to say that the clerk in charge
12 of the office, because as it indicates here, Peter was leaving
13 as he was arriving, she thought she had done something wrong by
14 receiving service on behalf of the judges?

15 A. Okay.

16 Q. Okay. So in other words, it's fair to say her
17 overreaction was, in fact, not this violent uproar where she
18 thought, oh, my God, I received service on behalf of Judge
19 Caldwell, Peter Welsh -- and I guess there were only two at
20 that location. And then when cooler heads prevailed and Peter
21 Welsh showed up, it says Peter Welch arrived --

22 MR. PERRI: Objection, Your Honor. That's a clear
23 hearsay statement that he's about to convey.

24 THE COURT: Is this the same report to which the
25 Deputy Marshal testified?

1 MR. PERRI: No, Your Honor, it was the thing that was
2 up on the elmo. It's a handwritten thing as far as I can tell.
3 I don't even know what it is. I haven't been shown it.

4 THE COURT: I do think in fairness there's testimony
5 about an account in a report. So if it's the report, I think
6 it's fair game to ask about the rest of the report. Now I'm
7 not sure that it's the report.

8 MR. PERRI: It's not, Your Honor.

9 THE COURT: Okay.

10 MR. PERRI: And I would be happy to allow the report
11 into evidence. But --

12 THE COURT: That's why I just wanted to make sure I
13 understood what's going on.

14 (Mr. Perri and Mr. Dougherty confer.)

15 THE COURT: I'll tell you what, we're going to do a
16 sidebar. We're going to do a sidebar with the white noise. So
17 if you want to stand up, that will be fine. Whatever you want
18 to do. You can't go anywhere, but you can stand up.

19 (Sidebar discussion held:)

20 THE COURT: Can you hear me?

21 MR. DOUGHERTY: Yes.

22 THE COURT: Mr. Perri, can you hear me?

23 MR. PERRI: Yes, Your Honor.

24 THE COURT: Okay. All right. So I'm not really
25 clear. There's a document, Mr. Dougherty, that you're holding.

1 I don't know what it is.

2 MR. DOUGHERTY: That's the one that you printed out
3 for me earlier.

4 THE COURT: From the D.C. Circuit?

5 MR. DOUGHERTY: Yes.

6 THE COURT: Okay. So there's -- but there's been no
7 testimony from this witness about this filing, correct?

8 MR. DOUGHERTY: Yes, he described the 4/30/2015
9 incident where I was supposedly violent here and had to be
10 escorted out.

11 THE COURT: I just want to make sure. Can this be
12 heard? Talk a little bit lower, okay. So it does -- I'm
13 assuming it probably does describe your version or somebody
14 else's version of the incident.

15 MR. DOUGHERTY: Uh-huh.

16 THE COURT: But it's not admissible with this
17 witness. In other words, you could affirmatively bring this in
18 through maybe your testimony or through the testimony of
19 somebody else. But this witness, unless you laid a foundation
20 that he knew about this filing, he had read it before, there's
21 no basis for this witness to testify. It's essentially trying
22 to get testimony in. So I'll let you ask the witness, were you
23 aware of a filing made.

24 MR. DOUGHERTY: Okay.

25 THE COURT: In the D.C. -- is it the D.C. Circuit?

1 MR. DOUGHERTY: Yes, D.C. Circuit.

2 THE COURT: You can ask him. If he says, no, that
3 ends the matter.

4 MR. DOUGHERTY: Okay.

5 THE COURT: If he says, yes, then you could say,
6 well, have you read the filing about the incident. And if he
7 says, no, that ends the matter. If he's read it, then I think
8 maybe then at that point, I'd let you pursue further
9 questioning. Mr. Perri?

10 MR. PERRI: That sounds reasonable, Your Honor. I
11 would also like to note that it seems to be a pattern that
12 perhaps the Defendant doesn't understand what cross examination
13 is because he repeatedly attempts to get in, affirmatively get
14 in information and almost testimony to explain his point of
15 view through cross examination.

16 And it's not appropriate. He has to do that in his
17 case-in-chief. He has to do that through a witness. And it
18 has to be according to the rules.

19 THE COURT: Right. Well, I mean, that's a fair
20 statement, but, I mean, I've sustained the objections when I
21 thought he's crossed the line. What's a hard thing to do in
22 this particular case is, the witnesses so far have testified a
23 lot about things that they know through other statements.

24 I mean, we haven't entertained hearsay objections.
25 But I just think in fairness if, for instance, this Deputy

1 Marshal has talked about an account of something that occurred
2 that he did not witness, and he testified pretty extensively
3 about it, so if he has knowledge about that account from other
4 sources, for instance, in this D.C. Circuit filing, I think it
5 would be very fair to pursue that given where the direct went.
6 Look, you don't get to testify, Mr. Dougherty --

7 MR. DOUGHERTY: Okay.

8 THE COURT: -- or even read into the evidence a
9 document. But like I said, you can ask if this witness is
10 familiar with your D.C. filings; and if he's not, then we're
11 done. You can ask if he is familiar with the D.C. filings, had
12 he read this particular filing, which gave an account. If he
13 says no, then we're done and you have to bring it in through
14 another witness.

15 MR. DOUGHERTY: Okay.

16 THE COURT: Okay.

17 MR. PERRI: I would add, Judge, I think it's fair for
18 the Defendant to ask the witness, are you aware that somebody
19 else gave a different account of what happened at that counter
20 at the Clerk's office.

21 THE COURT: You can do that as well.

22 MR. PERRI: Okay, that's fair. But he can't then
23 introduce what that statement is because it's hearsay and it
24 runs afoul of 608. And we're on cross examination.

25 THE COURT: We just heard this witness give the

1 account of courthouse employees about what occurred.

2 MR. PERRI: He was -- that was not offered for the
3 truth of the matter.

4 THE COURT: Okay.

5 MR. PERRI: So it's a little bit different, Your
6 Honor.

7 THE COURT: Okay, look, so I get it, and I didn't
8 have a hearsay objection, so I didn't have to rule on what it
9 was admitted for. And it's one of the challenges. I'm just
10 going to let the questioning go forward, as I've explained, and
11 you can further object to it if we've crossed the line.

12 MR. PERRI: Thank you, Your Honor.

13 THE COURT: All right, thank you. All right,
14 everybody, have a seat.

15 (Sidebar discussion concluded.)

16 THE COURT: Okay. Mr. Dougherty, go ahead.

17 MR. DOUGHERTY: All right.

18 BY MR. DOUGHERTY:

19 Q. Sorry for the confusion. Back to what we were discussing.
20 As you indicated, Michael was leading the conversation 99
21 percent of it, and, in fact, the three of you showed up and,
22 again, the concern was sincere and professional in every
23 regard. I don't want to --

24 THE COURT: You got to just get a question though not
25 your testimony. Just ask him questions.

1 MR. DOUGHERTY: Okay.

2 BY MR. DOUGHERTY:

3 Q. So do you recall when I asked -- when I gave him, as an
4 example, when you expressed concerns, the issue of
5 Pennsylvania's Castle Doctrine and the illustration I gave with
6 if a judge came to the house with two lawyers and opened the
7 door to come into my home and steal my TV, that I could
8 literally shoot all three, and, in fact, no indictment could be
9 brought against me. Do you remember that conversation?

10 A. I do.

11 Q. Okay. And he said, well, clearly -- do you remember him
12 saying, clearly, you know far more about this subject than we
13 do, as I went into various cases and examples and explanations
14 about what level of defense is available to individuals,
15 property owners, protecting reputation, whatever the case may
16 be?

17 A. I do recall Michael saying that.

18 Q. And that was rather a calm discussion?

19 A. Um-hum.

20 Q. He said -- well, do you recall him saying, well, Mr.
21 Dougherty, I just want to let you know, we're only here because
22 we were ordered to be here?

23 A. I remember him saying that as well.

24 Q. And at that point, when I said to him, do you remember, do
25 you remember me saying to him, you just said the magic words?

1 A. I do remember that.

2 Q. And he said, well, how so? And do you remember me going
3 to a lengthy discussion about qualified immunity and how, in
4 fact, you were all protected in that regard?

5 A. I don't remember word for word, but I remember that
6 conversation, yes.

7 Q. Okay. Are you aware that in this same timeframe, in 2015,
8 the Supreme Court reversed the Third Circuit on the *Elonis*
9 *versus U.S.* issue about a reasonable person being able to be
10 convicted on these communications as this was actually sent by
11 ECF and --

12 THE COURT: Mr. Perri stood. Were you objecting?

13 MR. PERRI: Yes, Your Honor.

14 THE COURT: Now you're getting into discussion of a
15 legal case not the conversation.

16 MR. DOUGHERTY: Well, I'm just saying in the
17 timeframe.

18 THE COURT: Yeah, but it doesn't -- if you had
19 discussions, I'll permit it. If you discussed *Elonis* at the
20 time, you can ask the question. The fact that *Elonis* was
21 decided at the same time, unless it was part of a discussion,
22 we're just getting into now legal issues.

23 MR. DOUGHERTY: Okay.

24 BY MR. DOUGHERTY:

25 Q. But in reference to the qualified immunity analysis and

1 discussion that we had to where, in fact, you were all
2 protected, and Michael then said, yes, that's all well and
3 good, were you aware in that same timeframe the Supreme Court
4 reversed the Third Circuit twice on qualified immunity being
5 misstated with no need for briefing and no need for oral
6 argument?

7 MR. PERRI: Objection, Your Honor.

8 MR. DOUGHERTY: In that same year?

9 THE COURT: Were you aware of that?

10 THE WITNESS: No, sir.

11 THE COURT: Okay. Next question.

12 BY MR. DOUGHERTY:

13 Q. So the context of the qualified immunity then you did get
14 fully, and from that, I'm assuming you didn't think I was a
15 threat to society or what was the final determination there?

16 A. Well, obviously I thought you were still a threat because
17 I left the case open.

18 Q. Okay. So then are you saying this has been added as a
19 count in this case?

20 A. What's that?

21 Q. The account of April 30th, 2015, which then prompted your
22 second visit on May 8th?

23 A. The account on April 30th is what prompted the second
24 visit, yes, sir.

25 Q. I understand that's what prompted it?

1 A. Yes, sir.

2 Q. But were you aware that there is a truthful statement
3 under oath that refutes everything that you say?

4 A. I was not aware of that, no, sir.

5 Q. Okay. And would you be surprised to find out that it was
6 part --

7 MR. PERRI: Objection as to his characterization of
8 it as truthful, Your Honor.

9 THE COURT: He asked, were you aware that a truthful
10 statement had been filed, and the witness answered no. So
11 that's the end of that.

12 MR. DOUGHERTY: Right.

13 BY MR. DOUGHERTY:

14 Q. Were you -- do you recall, as we came to the end of our
15 discussion, and I said, I, as a matter of fact, I have filed an
16 action in the District of Columbia, and it's in the mail as we
17 speak?

18 A. I don't remember if you said you were going to file it or
19 if you filed. But I do remember you were saying something
20 about filing or filed for a D.C. Circuit.

21 Q. Correct.

22 A. I do remember that, but I don't remember if it was already
23 filed or you were going to. I don't remember that.

24 Q. Okay. So would you be surprised to find out that I
25 actually said to you that I put it in the mail by Priority Mail

1 receipt confirmation Saturday, and you were on my door step on
2 Monday?

3 A. I'm sorry, can you repeat that question for me?

4 Q. Would you be surprised if, in fact, that was the content
5 of the conversation, that, in fact, I put it in the mail on
6 Saturday, and here you are on Monday, and therefore that is the
7 very same document that was attempted to be served on April
8 30th that caused you to come out a second time?

9 A. No, I wouldn't be surprised.

10 Q. Okay. So once again, the facts are that you heard
11 secondhand that this -- that I had had a situation where I was,
12 what, escorted from the building? Is that what the issue was,
13 the statement was?

14 A. Asked to leave first and then escorted, yes, sir, that's
15 what I was told.

16 Q. Okay. All right. And if, in fact, you were to find that
17 there was a statement under oath signed and filed in a court
18 pleading in Washington, DC, that went into the official record
19 on May 20, 2015, would that surprise you?

20 A. I don't know --

21 Q. In other words, how would you reconcile those two
22 accounts?

23 A. All I'm aware of for that account is you and a male
24 counterpart were in the building, tried to file something, it
25 didn't go well, voices got loud, you were asked to leave, you

1 didn't leave initially, so you were escorted out. That's all I
2 know about that account. I don't know anything about any
3 filings.

4 Q. Yes, but I'm saying --

5 A. I'm sorry.

6 Q. If you were to find out that there was a filing in writing
7 under oath that completely refutes everything you just said,
8 how would you reconcile that? What would you do to reconcile
9 that?

10 A. To reconcile it?

11 Q. Yes. I mean, you were told one story, and you find out
12 now someone else filed it under oath and in a legal pleading
13 completely refuting the account that you had been told. How
14 would you feel about the story that you had been told?

15 A. I mean, my counter parts are the ones that told me that
16 story. There are several witnesses. I would find it hard to
17 believe --

18 Q. Okay, very good. But the matter is that you had further
19 indicated -- that from the very same docket -- document, I
20 should say --

21 A. Um-hum.

22 Q. -- defense docket in case 15-1780?

23 A. Okay.

24 Q. And it indicates on one page the point --

25 THE COURT: You need to let the Government see it

1 first before we can put it up. Unless it's been introduced
2 into evidence already?

3 MR. DOUGHERTY: I believe it is.

4 THE COURT: It's already in evidence?

5 MR. PERRI: Yes, Your Honor.

6 MR. DOUGHERTY: Yes.

7 THE COURT: Then you can put it up.

8 (Complied.)

9 BY MR. DOUGHERTY:

10 Q. And if you could just read D.C. Circuit IOP, I through B?

11 A. Yes, sir. D.C. Circuit IOP. I, Duties of the Chief
12 Judge. The Chief Judge of the District of Columbia Court of
13 Appeals has the following administrative powers and duties: A,
14 to designate hearing divisions by random selection to hear
15 and/or determine cases and controversies pending before the
16 Court; B, to assign pending cases and controversies by random
17 selection to the designated divisions for hearing and/or
18 determination.

19 Continue?

20 Q. No, that's it.

21 A. Okay.

22 Q. Now when you read that, and as you can see the paragraph
23 right beneath it where it mentions *Marshall versus Jerrico*,
24 what does that mean to you? Are you familiar with the content
25 of that?

1 A. No, sir, not at all.

2 Q. So would it surprise you to find out that this
3 circumstance here is controlled by a federal statute that is
4 required by all circuit courts in the way of properly assigning
5 cases to guarantee the due process rights of the appellants?

6 A. I can't speak to that. I don't have any knowledge to
7 that.

8 Q. But would it surprise you to find out that's what it is?

9 A. No, if that's what it says. It's quoted. I mean, that's
10 what it says here on the paper.

11 Q. Okay. So then, therefore, if I were to tell you that
12 someone is, you know, trying to strip you of your rights, your
13 property, your reputation, whatever the case may be, is there
14 anything more valuable or precious to you than your
15 constitutional protections?

16 A. My life.

17 Q. Your life. Well, that's part of life, liberty and due
18 process of law.

19 A. Okay, fair enough.

20 Q. Isn't that in the same category?

21 A. Life, property.

22 Q. Life, liberty, and due process of law?

23 A. I believe I hold life at the highest.

24 Q. Okay. So the point being that these things that you seem
25 to be making reference to -- and I'm just going to put up one

1 more of those pages.

2 A. Um-hum.

3 Q. It's already in evidence.

4 A. Um-hum.

5 Q. If you could just read the paragraph right below, right to
6 an impartial tribunal?

7 A. Okay, yes, sir. To the Court, a fifth request for
8 production of your rule 28 U.S.C. 46 bravo, which must be
9 published in accordance with 28 U.S.C. 2077 before reassignment
10 of 13-CV-447, and 10-CV-1071.

11 Q. So once again, the contents of these letters, you put
12 together that the second amendment quotation, I heard
13 referenced by the prosecution, are we to conclude now that the
14 second amendment is considered to be a threat? Is that what
15 your position is?

16 A. The right to bear arms is not a threat, no.

17 Q. Well, I mean, the portion, the beginning of it, a
18 well-regulated militia being necessary for a security of a free
19 state. Would that be a threat?

20 A. The way it's written in the constitution, no, sir.

21 Q. Okay. Then the concept of a right to an impartial
22 tribunal, would that be a threat to someone?

23 A. A right to an impartial tribunal?

24 Q. A right to an impartial tribunal, a jury of 12 people?

25 A. No, that's not a threat.

1 Q. Okay. So there were certain attempts by the prosecution
2 to take certain statements that supposedly were about judges
3 and then going elsewhere in the document and reading something
4 that was referred to, you know, rhetorical device or
5 circumstance definitely, and at this point they were somehow
6 merged together to where these judges were being threatened,
7 yet it was filed on April 7th, 2015, and no one brought charges
8 against me at that time. Why?

9 A. Because I hadn't even opened up the investigation yet on
10 April 7th.

11 Q. You hadn't opened it up yet?

12 A. Not at the date of the filing, no.

13 Q. Oh, I'm saying though -- oh, I'm saying though the recount
14 we were just getting in terms of your report?

15 A. Okay, okay.

16 Q. Maybe not I'm not connecting them together properly, so
17 please forgive me. But it was a report written by you, and I
18 was given a copy of it.

19 MR. PERRI: Which one do you want, Mr. Dougherty?

20 MR. DOUGHERTY: The one mentioning -- right here. So
21 it's FID: 9366153, and it's talking about the April 30th, 2015,
22 event.

23 THE WITNESS: Okay.

24 BY MR. DOUGHERTY:

25 Q. And in other words, what happened with this, this

1 particular report?

2 A. Well, after it's written, it's reviewed and approved by a
3 supervisor, and then it's placed into the case file.

4 Q. Okay. But it's being offered now as though it's a fourth
5 count of some sort of violation.

6 MR. PERRI: Objection, Your Honor. There was a
7 motion in limine on this, and this is a legal matter, and the
8 Court has ruled on it, and it's characterized as 404(b)
9 evidence.

10 THE COURT: Right. So the -- there was a motion, you
11 will recall.

12 MR. DOUGHERTY: Yes.

13 THE COURT: And it had to do with whether or not we
14 would hear testimony about --

15 MR. DOUGHERTY: These reports.

16 THE COURT: Yes. And I ruled on it. So your request
17 -- if your question is, why is something admitted, I mean,
18 that's a legal question.

19 MR. DOUGHERTY: No, I'm trying to get the connective
20 tissue. I understand this is, you know, uncharged --

21 THE COURT: Okay. It was not charged, I think that's
22 undisputed.

23 MR. DOUGHERTY: So the point being that --

24 THE COURT: You're not on trial for that. If you
25 want me to tell the jury that, I will do that.

1 MR. DOUGHERTY: Yes.

2 THE COURT: He is not on trial for the court clerk
3 incident that you heard testimony about, and so that's not why
4 that testimony is admitted. That testimony was admitted for a
5 very limited purpose, and it was to go to whether or not Mr.
6 Dougherty would understand that the language used in the letter
7 could be perceived by others as threatening. And it's only
8 admitted for that purpose, all right.

9 It's not admitted to show that because he allegedly
10 did something in the Clerk's office he would do it again.
11 That's not why it's admitted. And the fact that the incident
12 occurred, you're not to conclude that he would then be more
13 likely to threaten somebody with a communication in the future.

14 It's limited to the purpose I've described, which is
15 for you to think that -- or you to rather hear from this
16 witness that Mr. Dougherty was told during the interview by the
17 Marshals and the FBI agent that the language in the letter was
18 viewed as threatening. All right.

19 MR. DOUGHERTY: Well, that is news to me.

20 BY MR. DOUGHERTY:

21 Q. So when we were in our final minutes together, the three
22 of us, I thought it was all jovial, handshaking, and the FBI
23 agent asked me -- do you remember the FBI agent asking me for
24 help with his accounts related to people giving him a hard
25 time, his expense account? Do you remember that conversation?

1 A. I don't remember that conversation.

2 Q. Okay. So with that, you know, back and forth and the
3 statements being that relative to the qualified immunity issue,
4 relative to my explanation as to what the Castle Doctrine means
5 in Pennsylvania, and, in fact, these things were just being
6 stated as a matter of fact or rhetorical especially, in fact,
7 trying to move the issue through the process realizing that --

8 MR. PERRI: Objection, Your Honor. The Defendant is
9 testifying. And these are not facts in evidence.

10 THE COURT: I confess, and when you spoke, and I was
11 listening to it, I didn't understand it. I'm looking at the
12 transcript. I don't fully understand it. I don't know whether
13 it's a question or not.

14 But here's what we're going to do. We're going to
15 use this as a breaking point for the evening, and I'm going to
16 try to figure this objection out when you depart.

17 So let's talk about a couple rules. When you leave
18 here, any notes -- if you take any notes, they need to be, you
19 know, they'll be kept by the deputy clerk in the jury room and
20 secured. You don't take them home with you.

21 It's really important that you remember the overall
22 instruction, which is because you're keeping an open mind and
23 you're waiting until all the evidence comes in and until you
24 deliberate and hear my instructions of the law to make a
25 decision, you're not to discuss the case. All right.

1 So when you go home tonight, and you are talking to
2 somebody in the house, yeah, I'm on jury duty, it's a criminal
3 case, I got to go back tomorrow. That's about it. And then at
4 the end when the trial is over, you're free to discuss what you
5 want. Okay.

6 No research. Don't talk to anybody about the case.
7 If somebody comes up to you and talks to you about the case,
8 please tell us in the morning and we'll address it then.
9 Otherwise, have a nice evening. I will see you back here,
10 we're going to start at 9.

11 COURTROOM DEPUTY: If you to report to Marlene at
12 8:45, that will be great.

13 THE COURT: We're going to try to get started right
14 away. All right. Thank you very much.

15 COURTROOM DEPUTY: All rise.

16 (Jury excused for the day at 4:57 p.m.)

17 THE COURT: All right. So unfortunately, I kind of
18 confused things because this goes back to kind of the way I
19 wrote the letter in response to the Government's motion. I
20 thought the motion was to bring in evidence about a prior
21 letter.

22 MR. PERRI: It is. It is, Your Honor.

23 THE COURT: All right.

24 MR. PERRI: And it was also about --

25 THE COURT: Was that letter introduced through this

1 agent?

2 MR. PERRI: Number 6.

3 THE COURT: All right, that was number 6.

4 MR. PERRI: Yes.

5 THE COURT: He then also talked about the clerk court
6 incident, I'll call it, the altercation. I think that's what
7 Mr. Dougherty is saying, this is news to me, because I
8 essentially conflated the two because I said the court clerk
9 altercation was admitted for the limited purpose.

10 And basically I'm not even sure how to -- whether --
11 why I conflated it. But I think for clarity, maybe I can
12 explain it to the jury tomorrow.

13 MR. PERRI: Sure.

14 THE COURT: If you want. But let's also make sure
15 that we're all on the same page.

16 MR. DOUGHERTY: Okay.

17 THE COURT: So this deputy marshal testified about
18 seeing the letter, and he testified about the letter, which is
19 now Government Exhibit 6.

20 MR. PERRI: Yes.

21 THE COURT: Okay. And that is from April 17th.

22 MR. PERRI: April 7th.

23 THE COURT: April 7th.

24 MR. PERRI: 2015.

25 THE COURT: Okay, thank you.

1 MR. YOUNG: This is the order. I don't know if you
2 have it in front of you. Do you want it, Judge?

3 THE COURT: That would be great, thanks. I can look
4 at it now.

5 (Complied.)

6 THE COURT: Is it April 7th? It's April 7th, 2015.
7 Okay. And then what I said was that letter, that can be
8 construed as another crime, as uncharged conduct. All right.
9 And -- but I agree, that should come in for the limited
10 purpose. And this is what I was addressing with the jury.

11 That letter is in evidence solely because when the
12 letter is discussed by the deputy marshal with Mr. Dougherty on
13 a later date, he is informed, and we heard testimony about
14 this, that that kind of language is viewed by others as
15 threatening.

16 MR. DOUGHERTY: He never said that.

17 THE COURT: Well, you know what, whether he said it
18 or not, that's the only reason the letter is admitted.

19 MR. PERRI: He did say that.

20 THE COURT: For what it's worth, my recollection is,
21 it couldn't have been clearer that he said it.

22 MR. DOUGHERTY: No, in my conversation with him on
23 the porch on April 13th, 2015, that's what I'm saying.

24 THE COURT: Okay. Well --

25 MR. YOUNG: I'm sorry to keep interrupting, I'm

1 trying to hold back as much as possible. Just one thing for
2 clarification. Mr. Dougherty, you can cross-examine him more
3 on that issue, and also if you choose to testify, you can
4 recount what you believe happened. Although, you will be open
5 for cross examination, obviously.

6 MR. DOUGHERTY: All right.

7 THE COURT: Thank you. That was helpful. Do you
8 understand, Mr. Dougherty?

9 MR. DOUGHERTY: Yes.

10 THE COURT: Truthfully, my recollection of his
11 testimony is not evidence, right, but the jury heard it. I
12 mean, for what it's worth, my recollection was, I even think
13 the language was, are you certain or, you know, it was in no
14 uncertain terms he told you that this language was viewed as
15 threatening.

16 But it's not my recollection that will control. But
17 I say it for the record because I do think it's appropriate. I
18 said it in my order, and I already gave a limiting instruction.
19 Now I think what I ended up doing, because we were also talking
20 about this court incident, the court clerk incident, and I
21 think I put that into the limiting instruction.

22 I'm not sure -- I'm not still in my mind sure exactly
23 why the Government elicited that evidence. I don't view it
24 though as uncharged criminal activity because it was undisputed
25 -- well, maybe because it came out a little bit differently

1 than I expected, but in the Government's papers, it said there
2 were no threats.

3 MR. PERRI: Correct.

4 THE COURT: Okay. Is the Government taking the
5 position now through the testimony that there were threats
6 made?

7 MR. PERRI: No. In fact, he said that it just got
8 heated. He didn't say anything about threats. He just said --
9 voices were raised, it got heated, he was asked to leave, he
10 didn't leave.

11 THE COURT: What is the purpose of eliciting that
12 testimony?

13 MR. PERRI: Okay, Your Honor --

14 THE COURT: Because, I mean -- yeah, what is the
15 purpose?

16 MR. PERRI: So Judge Conner was the victim of the
17 threatening communication that pertains to Count 1 of the
18 indictment. At the time that Judge Conner reads that letter
19 and the threatening language therein, he is aware that there
20 has been -- he's aware who Mr. Dougherty is and he's aware that
21 Mr. Dougherty was in an altercation at the Clerk's office in --

22 THE COURT: The altercation occurred when?

23 MR. PERRI: The altercation occurred on April 30th.

24 THE COURT: So it's after the letter?

25 MR. DOUGHERTY: Yes.

1 MR. PERRI: Yes.

2 THE COURT: Okay. It's after. But you're saying
3 Conner reads the letter after April 30th?

4 MR. DOUGHERTY: Conner read the letter two years
5 later.

6 MR. PERRI: Yes. Exhibit 6 is April 7, 2015.

7 THE COURT: That's the letter I've said comes in, but
8 with a limiting instruction. And I gave a limiting
9 instruction, and I'll clarify tomorrow. Mr. Dougherty, do you
10 want me to clarify it?

11 MR. DOUGHERTY: Your Honor, that's what I'm saying,
12 the 4/30/15 incident really has nothing to do --

13 THE COURT: I agree. That's what I'm saying, I
14 conflated that. I don't think you're harmed in any way by it.
15 If anything, you're helped because I've limited what it's
16 introduced for. But what is -- what is the purpose of
17 introducing it?

18 MR. PERRI: I'm trying to explain that, Your Honor.

19 THE COURT: Okay. But when you do, you know, keep in
20 mind what happened and the reason why we got segued is because
21 you're saying the incident happened before the letter. And it
22 didn't, the incident occurred after the letter.

23 MR. PERRI: After the April 7th letter.

24 THE COURT: Yes, okay.

25 MR. PERRI: But the letter that is the subject of

1 Count 1 --

2 THE COURT: Okay.

3 MR. PERRI: -- was in May of 2017.

4 THE COURT: Two years later.

5 MR. PERRI: Yes.

6 THE COURT: Okay.

7 MR. PERRI: So that incident was before the other
8 letter.

9 THE COURT: Okay.

10 MR. PERRI: So at the time that Judge Conner reads
11 that letter in 2017, he is aware of that incident that had
12 occurred where the Defendant is actually physically on the
13 premises in his same courthouse. And he will testify that it
14 factored into his perception of danger and the seriousness of
15 the situation.

16 THE COURT: Okay. All right. So here's what's going
17 on. I mean, part of the problem is, I mean, you know, I guess
18 we should have had oral argument maybe on the 404(b) motion.
19 But the way I read the Government's motion when it -- and it
20 went out of its way to say that there was no threatening
21 conduct in the Clerk's office. So what I did is, I said, well,
22 that doesn't sound like uncharged activity.

23 MR. PERRI: And I agree, Your Honor. I agree.

24 THE COURT: Well, but what I think, in fairness to
25 Mr. Dougherty, the way it's been presented is, it's a heated,

1 angry thing. And therefore, what does it go to? So I think
2 the way to solve that is, I will give a limiting instruction on
3 that, and I will make it clear that he's not been charged --
4 well, I did already, but I'll embellish.

5 I will add to it, and I will say he's not been
6 charged with the April 30th, 2015, incident, and you can view
7 that for very limited purposes. All right. And it sounds like
8 one of the purposes is, it goes to Judge Conner's frame of mind
9 when he reads the letter in 2017.

10 Is there any other purpose? I'll tell you what we'll
11 do, because it's 5:00, you think about it. And what we will do
12 is, we'll meet here before the jury comes back in, and I want
13 to hear from the Government what the purposes for which it
14 wants the April 30 clerk incident from 2015, why it's relevant.

15 And it is relevant. I will -- it's relevant to Judge
16 Conner, Chief Judge Conner's frame of mind when he reads the
17 letter. And I will limit it to that purpose unless you have
18 another purpose you want to articulate tomorrow. And I'll
19 think about it, too.

20 Mr. Dougherty, does that satisfy you?

21 MR. DOUGHERTY: Yes.

22 THE COURT: Okay. Then that's what we'll do. And we
23 can talk in the morning if you think about it overnight on that
24 issue. Okay. Now how much more cross do you have?

25 MR. DOUGHERTY: Not very much at all.

1 THE COURT: Okay. And how much -- what kind of is
2 tomorrow looking like? And when do you expect to finish your
3 case-in-chief? Tomorrow?

4 MR. PERRI: Judge, that's tough to say.

5 THE COURT: Well, I'm just asking. I said, expect.

6 MR. ADKINS: We have four more witnesses past Eric
7 Hanna.

8 THE COURT: Are we going to finish this week?

9 MR. PERRI: Yes. Yes.

10 THE COURT: Okay.

11 MR. ADKINS: Your Honor, we have Judge Conner, which
12 may take some time; then Corricelli, which I think is just
13 about the mail flowing through the mail system; and Armor
14 testifies, he's the last witness, about e-mails and how those,
15 you know, bounce around, interstate commerce.

16 MR. PERRI: The case agent, Chris Cruz, may take a
17 little time, Your Honor.

18 THE COURT: Okay. Now just one other thing. There
19 were two altercations that were mentioned in the motion.

20 MR. PERRI: No, Your Honor.

21 THE COURT: It was just two discussions about that
22 altercation, is that --

23 MR. PERRI: No, Your Honor. And I do describe this
24 in the motion in limine. I'm trying to remember what's in
25 there. But the May 13th thing was actually a phone call where

1 the Defendant called the Marshal Service.

2 THE COURT: Yes, okay, fine. You haven't adduced the
3 testimony of that yet.

4 MR. PERRI: No.

5 THE COURT: Are you going to?

6 MR. PERRI: No.

7 THE COURT: You're not going to?

8 MR. PERRI: I'm not.

9 THE COURT: So then I don't have to give a limiting
10 instruction on that. I don't know how it's coming in. That's
11 fine, all right. That takes care of that issue. All right.
12 Any other thing we need to resolve this evening? Yes, Mr.
13 Dougherty?

14 MR. DOUGHERTY: Again, the response that I had
15 provided that was limited to the prosecution's objections to my
16 jury instructions related to --

17 THE COURT: Oh, yes. Can you hand them up? Do you
18 have a copy?

19 MR. DOUGHERTY: Yes. It just has the --

20 THE COURT: You should probably not go further than
21 that, all right. Thank you.

22 (Complied.)

23 THE COURT: All right. So what is the specific
24 instruction you want?

25 MR. DOUGHERTY: Again, I put it in my version of it,

1 and the prosecution then filed an objection in similar form and
2 basically cited a lot of case law that was not relevant and
3 indicated I was trying to say that my argument on the first
4 amendment was exactly what was in *Watts*. In fact, *Watts* was
5 only being referenced to indicate there's a different standard
6 than there is for your next-door neighbor threat or standard.
7 And it's made very clear in that one law review article
8 attached to that.

9 THE COURT: Here's what I need from you though. I
10 went back, and I actually read the transcript last week about
11 our last time we discussed jury instructions in court. And
12 what I said to you then, I'm going to say now.

13 What I need from you, if you want a jury instruction,
14 is for you to give me the jury instruction you want. I don't
15 want a law review article about what you think there might be
16 one. Yes, Mr. Young?

17 MR. YOUNG: Judge, I'm sorry to interject. Just two
18 things. One, I think the law review article is just him
19 showing support for why he believes a specific jury instruction
20 would be okay, now here is what I would suggest as the specific
21 jury instruction.

22 I have shown Mr. Dougherty in the past an example of
23 what I believe he's looking for, which is a specific jury
24 instruction, which I'm sure the clerk court can pull up. It's
25 from *United States v. Joseph Brody* from the District of New

1 Jersey.

2 They were proposed jury instructions in that case
3 that deal with post-*Elonis* decisions dealing with the request
4 that the Court give the jury instruction that there must be
5 some type of specific intent on the Defendant's part for it to
6 be an actual true threat.

7 THE COURT: Right. I thought we do have a specific
8 intent instruction. In the Government's proposed instructions,
9 I thought there's basically a subjective and objective
10 component. I thought it was in the instructions.

11 MR. PERRI: There are two ways of establishing the
12 mens rea for these offenses. One is to show subjective intent.
13 The other is that you show he had knowledge that it would be
14 perceived as a threat. There's two ways of doing that.

15 If what Mr. Young is suggesting there's only one way
16 of doing that, and that is to show subjective intent, that is
17 an incorrect statement of the law. So I think that would be
18 something that the Court would have to look into. And --
19 because based on my research, that's not right.

20 MR. YOUNG: Judge, the last thing I'll say, and just,
21 again, there may be cases out there, and because they're
22 actively involved, they may see things dispositive on the
23 issue. All I know in the post-*Elonis* landscape, because the
24 Court did not make a final decision as to recklessness versus
25 specific intent standard, that it is still somewhat

1 discretionary upon district courts in how they instruct juries
2 on what they need to find in terms of a mens rea.

3 If there's something out there that says, here's the
4 bright line rule that it can be shown each way post-*Elonis*,
5 then, of course, that's the law.

6 THE COURT: Okay. Is it fair, so both sides agree,
7 that *Elonis*, the Third Circuit's most recent *Elonis* decision,
8 is the last word the Third Circuit has issued on this issue?

9 MR. DOUGHERTY: No.

10 THE COURT: What more recent Third Circuit case do
11 you think there is?

12 MR. DOUGHERTY: Again, the *Elonis*, too, in my reading
13 was a way to reaffirm that it would have been a valid
14 conviction anyway. And it did not specifically address the
15 fact that the Supreme Court prohibited --

16 THE COURT: That's not my question. You might be
17 right on that. I'm saying, out of the Third Circuit, is the
18 last word, the most recent word from the Third Circuit, not
19 from the Supreme Court, from the Third Circuit, is the most
20 recent word the most recent *Elonis* case?

21 MR. DOUGHERTY: No.

22 THE COURT: So what's the most recent *Elonis* case
23 then because --

24 MR. DOUGHERTY: There was one referenced by the
25 prosecution that was *United States versus CVS* that had some

1 certain of that, but I don't believe it addressed the first
2 amendment issue.

3 THE COURT: Okay.

4 MR. DOUGHERTY: But again, to --

5 THE COURT: We all want to try to get this right; the
6 Government, too.

7 MR. PERRI: Absolutely.

8 THE COURT: I have gone over the jury instruction.
9 The one change I made actually was I went back to *Elonis*. And
10 I thought that the instruction 7 that I proposed was -- it was
11 verbatim. I took it verbatim from the Third Circuit, so I
12 thought I can't be wrong about that. So that's why I took
13 that.

14 But maybe -- I think we need to just address this.
15 So if you have cases that you find over the evening, bring them
16 to my attention in the morning.

17 MR. PERRI: Judge, we'll certainly review those
18 cases. But just as a reminder, when I submitted my proposed
19 jury instructions, I always put some case citations at the
20 bottom.

21 THE COURT: I agree, yeah.

22 MR. PERRI: I would ask you or your clerk perhaps to
23 review those. Those were the most significant cases that I
24 could find.

25 THE COURT: Okay.

1 MR. PERRI: If there were any that were post-*Elonis*,
2 it would be in that.

3 THE COURT: All right. And I will take a look at
4 that.

5 MR. YOUNG: Judge, I'm not trying to dispute the
6 Government, I'm sure it's good faith, the only thing I am
7 suggesting is that the Third Circuit, I understand that would
8 be the law here where we are, but given that the Supreme Court
9 decision was somewhat ambiguous in its final holding --

10 THE COURT: Right.

11 MR. YOUNG: -- and given that *Elonis* does not deal
12 with a public figure like we have here, those are just some
13 things to think about, that's all. Because there is first
14 amendment demarkations between private actors and public
15 figures in first amendment protection of speech, and because
16 that does dovetail a little bit into the analysis of what type
17 of mens rea is necessary even in a criminal matter, it's just
18 something I think to be thoughtful of.

19 THE COURT: I appreciate that. What I need you to do
20 is, Mr. Dougherty, is write the jury instruction that you think
21 I should have to give. Okay? So I don't want a law review
22 article. I can look this up, and you can cite it as support.
23 I want the jury -- do you understand? Because this is what I
24 said to you at the last hearing, and I don't think you ever did
25 it.

1 MR. DOUGHERTY: The point is, yes, I did.

2 THE COURT: Well, where is it? Because I'm looking
3 at the papers and --

4 MR. DOUGHERTY: He gave me a copy of it. That's what
5 I submitted, and the Government responded in opposition to it.
6 That is what this is, a reply brief.

7 THE COURT: And it literally says, proposed jury
8 instruction number what?

9 MR. DOUGHERTY: Yes. And I reused the words that he
10 gave me exactly in the variations. But I also turn around and
11 mention, you know, two other things; subject of intent and
12 *Watts* as a first amendment issue. Then that's what prompted
13 him to suggest I was trying to say that the letter was
14 hyperbole. That's not the point.

15 I used the petition protection standard, which it had
16 to be of official public policy that you were complaining about
17 or just like the, you know, the Borough of (inaudible), the
18 standard is the same. It's still first amendment. Speech can
19 be hyperbole, but it also can be complaint about official
20 government policy.

21 THE COURT: All right. Now what I want to know --
22 hold on a second, my clerk is handing me something.

23 (The Court and the law clerk confer.)

24 THE COURT: So, you know, my clerk has pointed out to
25 me some language, which was DI 113.

1 MR. DOUGHERTY: Okay.

2 THE COURT: And you wrote -- it's captioned Proposed
3 Jury Instructions As a Vigorous Defense and Cross Complaint,
4 right. And then in my mind, whether you meant it or not, in my
5 mind, you then go into a legal argument. You say, since *Watts*,
6 through *Elonis*, U.S. Supreme Court has determined, da da da.
7 And you do discuss what, you know, you think the true threat,
8 it's a lengthy lengthy thing.

9 What I want from you is a specific instruction. Do
10 you see the way the Government proposed instructions?

11 MR. DOUGHERTY: Yes.

12 THE COURT: Right. So in other words, I don't want
13 any legal argument. I want what is the paragraph or the
14 sentence or the three sentences that you propose I read to the
15 jury.

16 MR. DOUGHERTY: Okay.

17 THE COURT: All right? And it is not to my
18 satisfaction in DI 113. I am not going to go through -- I
19 mean, at some point the burden has to shift to you, okay?

20 MR. DOUGHERTY: I'm just confused, Your Honor,
21 because, like I said, I thought I -- I calculated exactly what
22 he had handed me, what he just referenced. I think it may have
23 been a later document, I don't know. I'd have to get a look at
24 where the numbers are now.

25 THE COURT: Well, you can do it this evening. Do you

1 have documents there?

2 MR. DOUGHERTY: What's that?

3 THE COURT: Do you have the documents with you back
4 in your detention --

5 MR. DOUGHERTY: No. I have no way of getting to that
6 docket. But I'll ask standby counsel if he can.

7 MR. YOUNG: So, Judge, like I said, it's rather
8 simple. Either I can work with the clerks here tomorrow to
9 pull it up because it's on ECF or I can go to the our defender
10 office at some point in the morning.

11 THE COURT: That would be great, if you don't mind.

12 MR. YOUNG: Sure.

13 THE COURT: What is the name of the New Jersey case?

14 MR. YOUNG: It's *United States v. Joseph Brody*.

15 THE COURT: Right.

16 MR. YOUNG: And it's District of New Jersey.

17 THE COURT: All right, we'll find it.

18 MR. YOUNG: And Judge Hillman presided over the case.

19 THE COURT: You've cited that decision to me before.

20 MR. YOUNG: Right.

21 THE COURT: Okay, we will look at that. We're not
22 going to have to make a decision on this tomorrow anyway. But
23 I do think it could be Wednesday.

24 MR. ADKINS: Judge, if I may, one thing? I know we
25 were talking about timing of witnesses, and I failed to mention

1 Pat Armor would be the last witness. I kind of came on this
2 case a little bit later. But typically his testimony would be
3 something that we would typically ask a Defendant if he would
4 stipulate to the interstate requirements that Pat Armor would
5 testify to in relation to the e-mails and how they flow and all
6 that other stuff because Pat Armor would be an expert witness
7 and he can talk about that.

8 That's typically something I would probably ask if
9 that element would be satisfied because that's essentially what
10 we always do. He's not going to talk about, you know, the
11 e-mail in its entirety or anything like that. It's just about
12 the flow of the e-mails.

13 THE COURT: Are you asking me to ask Mr. Dougherty?

14 MR. ADKINS: I guess what I'm proposing is if there
15 is a stipulation that could be reached between the parties that
16 Mr. Armor's testimony would not be necessary, and it is as to
17 that element of interstate transmission of communications via
18 e-mail, which would be, I think, Counts 2 and 4.

19 THE COURT: Okay. So, Mr. Dougherty, you heard
20 basically the Government -- and it's true, in a lot of cases
21 the parties stipulate to the interstate commerce nexus. It's
22 your choice. You do not have to do that. You might want to.
23 Why don't you think about it, and then tell us -- is he going
24 to come tomorrow? Is that the point?

25 MR. ADKINS: I think he's in the building, Your

1 Honor. He's supposed to be here tomorrow, but he's in the
2 building. So I don't think it's an issue.

3 MR. PERRI: And, of course, Judge, a stipulation is
4 just a fancy word of saying, we agree to something that we're
5 really not fighting about. And the fact that these e-mails
6 traveled in --

7 THE COURT: Look, nobody is fighting the authenticity
8 of he e-mails. I mean, that's not being fought.

9 MR. PERRI: No. I mean, that the e-mails affect and
10 travel in interstate commerce.

11 THE COURT: I understand. But I'm just saying Mr.
12 Dougherty might very well agree with this. He's not fighting
13 the authenticity of the e-mails. Do you want to -- are you
14 prepared to agree to tell the jury that the parties agree, that
15 they stipulate, that the two e-mails traveled in interstate
16 commerce and, therefore, that that element of the offense is
17 satisfied? Or do you want to think about it?

18 MR. DOUGHERTY: Yes.

19 THE COURT: Okay. All right, think about it. And
20 you know you are -- that's your choice. Again, I'm not trying
21 to force you to do that. That is completely up to your choice.
22 The Government has the burden to prove every aspect of its
23 case.

24 MR. DOUGHERTY: Um-hum.

25 THE COURT: So, all right. Anything else? Okay.

1 Thank you very much. We'll see you in the morning.

2 COURTROOM DEPUTY: All rise.

3 (Proceeding adjourned for the day at 5:23 p.m.)

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CERTIFICATION

I, Wendy C. Yinger, Federal Official Realtime Court Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

/s/ Wendy C. Yinger
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